

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

DAVID L. WATKINS, #219698,	)	
	)	
Petitioner,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	2:07-cv-1040-MHT
WARDEN LEPOSEY DANIEL,	)	
et al.,	)	
	)	
Respondents.	)	

**INITIAL RESPONSE TO 28 USC § 2254 PETITION**

Come now the Respondents in the above styled cause, by and through the Attorney General of the State of Alabama, in response to this Court's order issued on, November 29, 2007, and answer Watkins's habeas petition as follows:

1. Watkins was convicted of murder, and sentenced on October 22, 2001, to serve life in prison. (Ex. A, p. 1; Ex. C, C. 319-20, 331, 370)
2. He appears to raise the following arguments in his habeas petition:
  - a. "The evidence was insufficient to support intentional murder conviction due to an absence of evidence of complicity[.]" (Doc. 1, p. 5; Doc. 1-2, p. 7-11)
  - b. Trial counsel was ineffective. Watkins's confession indicated that he objected to any violence that could endanger life, that he did not

participate in the violent acts, and he “tried to prevent the crime[;]” however, counsel did not challenge the State’s evidence, and counsel did not request that the jury be instructed on the principle of repudiation (Doc. 1, p. 7; Doc. 1-2, p. 11-15)

- c. Appellate counsel was ineffective for not raising the claim, in a motion for new trial, that the jury should have been instructed on manslaughter, based on intoxication, because the “three co-defendants and the victim w[ere] drinking on the night of the murder.” (Doc. 1, p. 9; Doc. 1-2, p. 15-18)

3. Watkins should be denied habeas relief, because he filed his petition outside the one-year statute of limitations created by 28 U.S.C. § 2244(d).

## **PROCEDURAL HISTORY**

### **A. Trial and Direct Appeal**

4. A jury found Watkins guilty of murder, and he was sentenced on October 22, 2001, to serve life in prison. (Ex. A, p. 1; Ex. C, C. 319-20, 331, 370)

5. Watkins directly appealed his conviction to the Alabama Court of Criminal Appeals. He raised the following issues on appeal:

a. The trial court erred in failing to instruct the jury on intoxication and the lesser-included offense of manslaughter. (Ex. A, p. 1-2; Ex. C, p. 349-51)

b. The trial court erred when it allowed the prosecution to quote from a transcript of a videotaped confession. (Ex. A, p. 2-6; Ex. C, p. 351-52)

6. The Alabama Court of Criminal Appeals determined, in a memorandum opinion issued on April 19, 2002, that the first issue was not preserved for appellate review. (Ex. A, p. 1-2) The second issue was also not preserved for appellate review, because Watkins's trial counsel only made a general objection, and the only adverse ruling that he received was to this general objection. (Ex. A, p. 5-6)

7. Watkins never filed a timely application for rehearing or properly petitioned the Supreme Court of Alabama for certiorari review. The Alabama Court of Criminal Appeals issued its certificate of judgment on May 7, 2002. (Ex. B)

## **B. State Post-Conviction**

8. Watkins filed a state post-conviction petition, pursuant to Rule 32 of the Alabama Rules of Criminal Procedure on July 23, 2006<sup>1</sup>. (Ex. C, C. 13)

9. In the petition, he raised the following issues:

---

<sup>1</sup> The Respondents are using the earliest date that the petition could have been mailed, the date that he signed the petition.

- a. Appellate counsel was ineffective for not raising a claim of ineffective assistance of trial counsel in a motion for new trial for trial counsel's failure to submit a written request that the jury be instructed on the lesser included offense of manslaughter due to intoxication, and that the jury be instructed "on a[] particularized intent to kill issue with regard to accomplice liability." (Ex. C, C. 23) (Ex. C, C. 23-34)
- b. His indictment was defective, because it failed to contain a "statement of the facts and cause of the accusation of the specific offense, coming under the general description which [Watkins] was charged." (Ex. C, C. 34) He appears to argue that, because the indictment did not allege that he was an accomplice in the murder, it was defective. (Ex. C, C. 34-43)

10. The State of Alabama responded to the petition, and argued that appellate counsel could not have been ineffective for failing to raise the issue of ineffective assistance of trial counsel concerning the issue of intoxication, because it was not a reasonable theory based upon the evidence presented at trial. (Ex. C, C. 391-92) Concerning the issue on instructing the jury on intent to kill, the State argued that the trial court "gave the standard jury instructions on the charge of [m]urder, which included the language on intent." (Ex. C, C. 392)



11. The State also argued, regarding Watkins's claim of a defective indictment that the indictment "set[] forth the elements of the offense and it sufficiently apprised [Watkins] of what he must be prepared to meet." (Ex. C, C. 392)

12. A hearing was held in this matter. At the hearing, Watkins's trial attorney testified that he did not believe the evidence showed that Watkins was intoxicated to such an extent as to negate the intent element of the murder charge reducing it to manslaughter. This is why he did not request such an instruction. (Ex. C., R. 7-9) Watkins also admitted that there was nothing in the trial transcript to indicate his level of intoxication. (Ex. C, R. 14-16) Concerning the issue of instructing the jury on intent, the judge pointed out that the jury was instructed on the theory of aiding and abetting. (Ex. C, R. 23-24) The judge also recognized that the jury could have inferred Watkins's intent from his actions, which including kicking and urinating on the victim. (Ex. C, R. 22-27) The jury was charged that to find Watkins guilty of intentional murder it must find that he shot the victim or aided and abetted in that act, "[a]nd in committing the act or acts which caused the death of the deceased, the defendant acted with intent." (Ex. C, C. 313-14) It was explained to the jury that it could infer Watkins's intent "from the facts and circumstances surrounding the whole transaction or incident as well as the conduct of the defendant." (Ex. C, C. 314) The jury was also instructed on the law of

aiding and abetting. (Ex. C, C. 314-15) At the conclusion of the hearing, the judge denied the petition. (Ex. C, R. 28)

13. In a written order, the judge also stated:

[Watkins] alleges ineffective assistance of counsel due to counsel's failure to ask for a jury charge on manslaughter because of his intoxication. However, [Watkins] acknowledged that there was no actual evidence at trial concerning his intoxication. Thus, there was no basis for requesting the lesser-included charge. In addition, [Watkins] failed to satisfy the requirements of Strickland v. Washington, 466 U.S. 668 (1984)].

Secondly, [Watkins] claims that the jury was not properly charged as to the *mens rea* required for a conviction of an accomplice. The Court specifically told the jury that [Watkins] could only be found guilty of accomplice liability if he intended to assist in the murder. Not only is the assertion of [Watkins] without merit but also it is precluded as time-barred.

Finally, [Watkins] questions his indictment. This claim too is precluded as it could have been raised previously and it is time-barred.

(Ex. C, C. 423)

14. Watkins appealed the denial of his petition to the Alabama Court of Criminal Appeals.

15. Watkins raised the following issues on appeal:

- a. Appellate counsel was ineffective for failing to raise ineffective assistance of trial counsel in a motion for new trial, because trial

counsel failed to request an instruction on manslaughter due to intoxication. (Ex. D, p. 12-18)

- b. The trial court erred when it failed to grant his subpoena for production of a certain record, namely a videotape, to support his claims. (Ex. D, p. 19-25)

16. The Court of Criminal Appeals held that the ineffective assistance of appellate counsel claim was time-barred. (Ex. E, p. 2) The Court also ruled that Watkins did not demonstrate good cause entitling him to discovery, because the videotape was requested to support his ineffective assistance of counsel claim, a claim that was precluded from review because it was time-barred. (Ex. E, p. 8)

17. The Alabama Court of Criminal Appeals overruled his application for rehearing (Ex. F), and Watkins petitioned the Supreme Court of Alabama for certiorari review. In the petition, he argued that the Court of Criminal Appeals's opinion conflicted with the United States and Alabama Constitutions, Supreme Court of Alabama precedent, and Rule 32.3 of the Alabama Rules of Criminal Procedure, because the Court of Criminal Appeals determined that Watkins had not shown good cause for his discovery request, because the ineffective assistance of counsel claim was precluded as time-barred; however, the State, in its response to the Rule 32 petition never argued this ground of preclusion. (Ex. G, p. 5-7)

18. The Supreme Court of Alabama denied certiorari review and issued its certificate of judgment on August 31, 2007. (Ex. H)

**C. Federal Habeas Corpus**

19. Watkins filed his federal habeas corpus petition on November 26, 2007. (Doc. 1, p. 15)

**MEMORANDUM BRIEF**

**A. Applicability of the One-Year Statute of Limitations**

20. Title 28 U.S.C. § 2244(d)(1) applies a one-year statute of limitation to an application for a writ of habeas corpus to an individual incarcerated pursuant to a state court judgment.

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of-

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or,

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

21. This one-year statute of limitation became effective on April 24, 1996.

See Carey v. Saffold, 536 U.S. 214, 217 (2002) (noting the effective date of the federal limitation period); Drew v. Dept. of Corr., 297 F.3d 1278, 1282 (11th Cir. 2002) (same). In cases where the conviction is obtained following the one-year period, the defendant has one year from the date on which his conviction becomes final to mount a federal challenge. Title 28 U.S.C. § 2244(d)(1)(A).

22. Watkins's conviction became final on May 7, 2002. (Ex. B) Watkins filed his Rule 32 petition on July 23, 2006. (Ex. C, C. 13) A total of 1,538 days passed between his direct appeal becoming final and the filing of his Rule 32 petition.<sup>2</sup> The filing of Watkins's Rule 32 petition on July 23, 2006 has no tolling effect on the filing of his federal habeas petition, because the Rule 32 petition was filed after the time for filing the habeas petition had expired on May 7, 2003 -- one year following the end of the direct appeal. See Webster v. Moore, 199 F. 3d

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<sup>2</sup> Watkins is not entitled to the additional 90 days to petition the Supreme Court of the United States for certiorari review before his conviction becomes final, under Bond v. Moore, 309 F.3d 770, 773-74 (11th Cir. 2002), because he never appealed his case through the "state court of last resort," the Supreme Court of Alabama. See U.S. Sup. Ct. R. 13.1.

1256, 1259 (11th Cir. 2000) (holding a petition “that is filed following the expiration of the limitations period cannot toll that period because there is no period remaining to be tolled”).

23. Watkins also has not demonstrated any “extraordinary circumstances that are both beyond his control and unavoidable with diligence” that could equitably toll his untimely petition. See Sandvik v. United States, 177 F. 3d 1269, 1271 (11th Cir. 1999). Watkins should therefore be denied relief because the statute of limitation of 28 U.S.C. § 2244 (d) bars his petition.

24. Watkins alleged in his Rule 32 petition that he never learned from his appellate counsel that his appeal had been denied. (Ex. C, C. 22) The Alabama Court of Criminal Appeals sent a letter, dated March 31, 2004, to Watkins informing him that the Court had affirmed his conviction on April 19, 2002, and the certificate of judgment issued on May 7, 2002. (Ex. C, C. 380) Therefore, even if Watkins was entitled to the benefit of not having the time begin until he learned the status of his appeal around March 31, 2004, he still waited over two years to file his Rule 32 petition, and the time for filing his federal habeas petition would have already run. See Webster, 199 F. 3d at 1259.

25. Watkins did file a mandamus petition on January 25, 2005. (Ex. I) The Respondents, however, do not believe that this is a proper post-conviction petition for collateral review referred to in Title 28 U.S.C. § 2244(d)(2), because a petition

filed pursuant to Rule 32 of the Alabama Rules of Criminal Procedure, not a mandamus petition is the proper method to challenge a criminal conviction. See Ala. R. Crim. P. 32.4 (“A proceeding under this rule displaces all post-trial remedies except post-trial motions under Rule 24 [motions for new trial] and appeal. Any other post-conviction petition seeking relief from a conviction or sentence shall be treated as a proceeding under this rule.” A writ of mandamus, on the other hand,

is a drastic and extraordinary writ to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court.

Ex parte Trotman, 965 So. 2d 780, 782 (Ala. 2007). Therefore, a mandamus petition is not a proper petition for collateral review, and should not be considered for tolling purposes. See e.g., Moore v. Cain, 298 F. 3d 361, 366-68 (5<sup>th</sup> Cir. 2002) (recognizing that a mandamus petition is sought to compel a court to perform its duty is not a challenge to a conviction, and in this case, was not a post-conviction petition seeking collateral review of a conviction; thus, it had no tolling effect).

26. Even if the mandamus petition could be considered a petition for collateral review of Watkins’s criminal conviction, the petition was not properly filed and should have no tolling effect. On January 26, 2005, the Alabama Court of Criminal Appeals ordered Watkins, within 14 days, to comply with the service

requirements of Rule 21(a) of the Alabama Rules of Appellate Procedure. (Ex. J) Watkins failed to comply, and the mandamus petition was dismissed on March 2, 2005. (Ex. K)

27. Even if the Respondents, however, were to give Watkins the benefit of starting his time from the date that the Court of Criminal Appeals informed him of the status of his direct appeal, March 31, 2004, and give him the benefit of having the mandamus petition toll the one-year statute of limitations, his petition would still be time-barred. Three-hundred days elapsed between March 31, 2004, and when Watkins filed his mandamus petition on January 25, 2005. The mandamus petition was dismissed on March 2, 2005. Another 508 days elapsed between March 2, 2005, and the filing of his Rule 32 petition, on July 23, 2006. The certificate of judgment affirming the denial of his Rule 32 petition issued on August 31, 2007. From this date until the filing of his federal habeas petition on November 26, 2007, 87 days elapsed. Therefore, even giving Watkins every benefit of the doubt and tolling period possibly available, a total of 895 days elapsed between when he learned of the status of his direct appeal and the filing of his federal habeas petition. This is well over a year and his federal habeas petition would still be untimely. Consequently, he should be denied relief.<sup>3</sup>

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<sup>3</sup> The Respondents believe that Watkins's habeas petition is clearly barred by the one-year statute of limitations and has submitted supporting documentation. If this Court does not believe that the petition is barred by the limitation period, the



Table of Exhibits

<u>Exhibit Designation</u>	<u>Exhibit Description</u>
Exhibit A	Alabama Court of Criminal Appeals's decision affirming Watkins's conviction on direct appeal, on April 19, 2002 (CR-01-0232)
Exhibit B	Certificate of Judgment issued on May 7, 2002, affirming the conviction (CR-01-0232)
Exhibit C	Transcript on appeal of the denial of Watkins's Rule 32 petition (CR-06-0408)
Exhibit D	Watkins's appellate brief (CR-06-0408)
Exhibit E	The Court of Criminal Appeals's opinion issued on April 20, 2007, affirming the denial of his Rule 32 petition (CR-06-0408)
Exhibit F	Alabama Court of Criminal Appeals's decision overruling Watkins's application for rehearing (CR-06-0408)
Exhibit G	Watkins's petition for certiorari review to the Supreme Court of Alabama (CR-06-0408)
Exhibit H	Certificate of judgment issued on August 31, 2007 (CR-06-0408)
Exhibit I	Docket sheet concerning the filing of Watkins's mandamus petition (CR-04-0731)
Exhibit J	Alabama Court of Criminal Appeals's order giving Watkins 14 days to comply with the service requirements (CR-04-0731)
Exhibit K	Alabama Court of Criminal Appeals's order dismissing Watkins's mandamus

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respondents request an opportunity to argue, in the alternative, that the claims are unexhausted, procedurally defaulted, or were adjudicated properly in the state courts.

	petition, on March 2, 2005, for failure to properly serve the parties (CR-04-0731)
--	--

Respectfully submitted

Troy King  
*Attorney General*

s/Jean-Paul M. Chappell  
Jean-Paul M. Chappell(CHA073)  
*Assistant Attorney General*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of December, 2007, I filed the foregoing with the Clerk of the Court and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: David L. Watkins, AIS# 219698, PO Box 1107, Elmore, AL 36025.

Respectfully submitted,

s/Jean-Paul M. Chappell  
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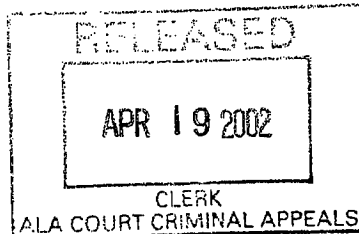
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## Court of Criminal Appeals

State of Alabama  
Judicial Building, 300 Dexter Avenue  
P. O. Box 301555  
Montgomery, AL 36130-1555

April 19, 2002

H.W."BUCKY" McMILLAN  
Presiding Judge  
SUE BELL COBB  
PAMELA W. BASCHAB  
GREG SHAW  
A. KELLI WISE  
Judges



Lane W. Mann  
Clerk  
Wanda K. Ivey  
Assistant Clerk  
(334) 242-4590  
Fax (334) 242-4689

### MEMORANDUM

CR-01-0232

Montgomery Circuit Court CC-2000-1506

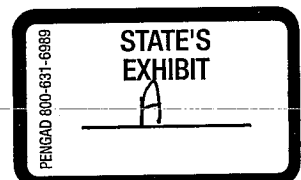
David Leonard Watkins, alias David L. Watkins and David Watkins v. State

PATTERSON, Retired Appellate Judge.

Watkins appeals from his conviction for murder and sentence, as a habitual offender, of life imprisonment. He was also ordered to pay \$7,600.39 in restitution; \$50 to the Crime Victims Assessment fund; \$150 in attorney fees; and court costs.

I.

Watkins contends that the trial court erred in failing to instruct the jury on intoxication and on the offense of manslaughter, as a lesser offense of the offense of intentional murder. He argues that the evidence of his intoxication at the time of the killing supported these instructions. Watkins's appellate counsel concedes that this issue was not preserved for our review. Because this is not



a death-penalty case, we cannot review it for plain error, as he requests. See Myers v. State, 677 So. 2d 807 (Ala. Crim. App. 1995).

II.

Watkins contends that the trial court erred in allowing the prosecution, in closing argument, to allegedly quote to the jury a portion of a transcript of Watkins's videotaped confession. Prior to trial, the trial court denied the prosecution's request to provide that transcript to the jury.<sup>1</sup> Watkins asserts that, "in the closing statement, the prosecution repeatedly read from the transcript -- forcing upon the jury the prosecution's opinion of the contents of the tape." (Appellant's brief, p. 12.) He also argues that the trial court erred in not giving the jury curative instructions.

The pertinent portion of the prosecutor's closing argument shows the following:

"[W]hen you go back in that jury room, as finders of fact, part of your job is to determine what was said on that [videotaped] statement. .... But what I'm going to show you now comes from what we've listened to on the statement and this is what we believe the defendant to be saying from our view of the statement. Again, as finders of fact, ... you can agree with us or you can disagree with us or you can ... determine what was actually said on this tape. But let's start with the defendant's statement.

"Question: Okay. Answer: Once he got there, I urinated on him. I took a leak on him for no reason

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<sup>1</sup>In so ruling, the trial court noted the following: "I think that almost all of the transcript is correct. However, it does concern me that there are a few incidents where [the videotape] appeared to me to be inaudible ...." The court continued, "[T]here's only a few incidents and a few words that are really, in my opinion, not audible, although it -- certainly at times the defendant is not speaking as loudly ... [as] or clearly as other portions."

whatsoever. Question: All right. Was this before or after you kicked him?

"It was before I kicked him. Question: Was this before or after Robert picked him up and threw him down on the ground? Answer: It was after. I don't know if he dropped him on the head. ... When I came outside, his head was bleeding, and that's when I took a leak on him.

"This is where the defendant confesses to urinating and kicking the victim during the altercation. I think we all heard that from the statement so we won't dwell on that.

"THE COURT: Come up here just a minute.

"(Bench conference was held.)

"MR. POWELL [the prosecutor]: Again, if you continue to go through the defendant's statement, Question: How did he get to the end of the street? Answer: He pretty much got up on his own. Question: And he walked --

"THE COURT: Come up here, Mr. Powell.

"(Bench conference was held.)

"MR. POWELL: There was another portion of the statement where Sergeant Loria asked him, Well, if you and Latoya urinated on him, how did you pick him up and carry him to the end of the street? In the statement, the defendant says, basically he got up and he staggered around and he walked down to the end of the street where the church was. Play back the portion of the tape, listen to it for yourself. In that portion of the tape, he says, that after they got done hitting him and kicking him, they walked down to the end of the street.

"There's another portion of the statement where Sergeant Loria asked the defendant who hit him over the end [sic] with the board. The defendant responds, Toya did. There's a portion of the statement where Sergeant Loria goes, Well, you saw this? And the defendant's response is I saw this. And then the defendant talks

about how he tried to stop her. He even said the same thing on the witness stand. He said he went over to her and grabbed her around the waist. In his statement, he also says that when he grabbed her, she dropped the board. And he also says in his statement that she was persistent. She kept on. So since she was persistent he says in his statement, if you'll listen for it, I told her to do it. Just do it. And then she went on and did it, because she was going to do it any way. If you'll listen, that's in the statement.

"Basically, the defendant is telling Toya, if you're going to hit him, go ahead and hit him.

"MR. DURANT [defense counsel]: Judge, may we approach?

"THE COURT: Yes.

"(Bench conference being held.)

"MR. DURANT: Judge, I know that you have admonished Mr. Powell not to use the actual statement in addressing the jury. But in ... fact he's still doing the same thing --

"THE COURT: He can argue, but he cannot -- (inaudible).

"MR. DURANT: Well, he is constantly referring to that, Judge.

"THE COURT: Just refer to your notes.

"(In the hearing of the jury.)

"MR. POWELL: If you continue listening to the statement, you'll come to a point where Sergeant Loria asked him, Why didn't you help him? He was begging Robert for his life, why didn't you help him? And if you'll listen to the defendant's response, he responds, He never begged me. If you continue on through his statement --

"MR. DURANT: Judge, we object again. May we approach?

"MR. POWELL: I'm -- I'm not reading.

" (Bench conference was held.)

"MR. POWELL: Then we get to the most critical portion of the statement. There comes a point where Detective Kennedy asked him -- and Junior said -- and before she can finish her question, the defendant starts talking. And I'm going to play that portion of the videotape statement for you again.

" (Taped statement played again.)

"MR. DURANT: Judge, we're going to object to this also.

"THE COURT: Overruled."

The only adverse ruling, in the excerpt above, was in response to Watkins's general objection to the prosecutor's playing a portion of the videotape. Up to that point, no adverse ruling was entered by the court. See Lee v. State, 562 So. 2d 657, 665 (Ala. Crim. App. 1989) (the record presented no adverse ruling where, even though the trial court warned the prosecutor to refrain from referring to the appellant as a vicious person, it did not expressly rule on counsel's objection, and the appellant's attorney made no request for a curative instruction to be given, or motion to strike or exclude the comment). Watkins's general objection preserved nothing for this court's review. See Marty v. State, 656 So. 2d 416 (Ala. Crim. App. 1994).

"'Generally, improper argument of counsel is not ... subject to review on appeal unless there is a timely and specific objection by counsel or a motion to exclude, and adverse ruling thereon by the trial court, or a refusal of the trial court to make a ruling, and an objection thereto.'"

Steely v. State, 622 So. 2d 421, 423 (Ala. Crim. App. 1992) (quoting Trawick v. State, 431 So. 2d 574, 578 (Ala. Crim.



App. 1983)). We cannot review Watkins's claim.

Accordingly, the trial court's judgment is affirmed.

The foregoing memorandum opinion was prepared by Retired Appellate Judge John Patterson while serving on active duty status as a judge of this court under the provisions of § 12-18-10(e), Ala. Code 1975.

AFFIRMED.

McMillan, P.J., and Cobb, Baschab, and Wise, JJ. concur.  
Shaw, J., concurs in the result.

**THE STATE OF ALABAMA— JUDICIAL DEPARTMENT  
THE COURT OF CRIMINAL APPEALS**

**CERTIFICATE OF JUDGMENT**

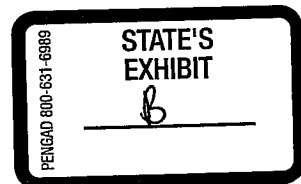
**Criminal Appeals Case CR-01-0232**

David Leonard Watkins, alias v. State of Alabama (Appeal from Montgomery Circuit Court: CC00-1506).

Whereas, the appeal in the above cause having been duly submitted and considered, it is now hereby certified that on the 19th day of April, 2002, the judgment of the court below was affirmed.

Witness, Lane W. Mann, Clerk,  
Court of Criminal Appeals, this  
7th day of May, 2002

  
Clerk  
Court of Criminal Appeals  
State of Alabama



COURT OF CRIMINAL APPEALS NO.		CR 06-408
<b>APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS</b>		
FROM		
CIRCUIT COURT OF	MONTGOMERY	COUNTY, ALABAMA
CIRCUIT COURT NO	CC 00-1506.60	
CIRCUIT JUDGE	TRUMAN HOBBS	
Type of Conviction/ Order Appealed From:	RULE 32	
Sentence Imposed:		
Defendant Indigent:	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
DAVID WATKINS		
		NAME OF APPELLANT
PROSE AIS#219698		
(Appellant's Attorney)	(Telephone No.)	
P.O.BOX 1107		
(Address)		
ELMORE, ALABAMA 36025		
(City)	(State)	(Zip Code)
V.		
STATE OF ALABAMA		
		NAME OF APPELLEE
(State represented by Attorney General)		
NOTE: If municipal appeal, indicate above, and enter name and address of municipal attorney below.		
df		

(For Court of Criminal Appeals Use Only)



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ACRO370 ALABAMA JUDICIAL INFORMATION SYSTEM CASE: CC 2000 001506.60  
 OPER: TOR CASE ACTION SUMMARY  
 PAGE: 1 CIRCUIT CRIMINAL RUN DATE: 12/05/2006  
 =====  
 IN THE CIRCUIT COURT OF MONTGOMERY JUDGE: TMH

STATE OF ALABAMA VS WATKINS DAVID LEONARD  
 DRAPER C.F.  
 CASE: CC 2000 001506.60 PO BOX 1107  
 ELMORE, AL 36025 0000

DOB: 09/18/1979 SEX: M RACE: B HT: 5 07 WT: 150 HR: BLK EYES: BRO  
 SSN: 381867261 ALIAS NAMES:

CHARGE01: RULE 32-FELONY CODE01: RULE LIT: RULE 32-FELONY TYP: F #: 001  
 OFFENSE DATE: AGENCY/OFFICER: 0030100

DATE WAR/CAP ISS: DATE ARRESTED:  
 DATE INDICTED: DATE FILED: 08/16/2006  
 DATE RELEASED: DATE HEARING:  
 BOND AMOUNT: \$ .00 SURETIES:

DATE 1: DESC: TIME: 0000  
 DATE 2: DESC: TIME: 0000

TRACKING NOS: CC 2000 001506 00 /

DEF/ATY:

TYPE:

TYPE:

00000

00000

PROSECUTOR:

OTH CSE: CC200000150600 CHK/TICKET NO: GRAND JURY:  
 COURT REPORTER: SID NO: 0000000000  
 DEF STATUS: PRISON DEMAND: OPER: TOR

TRANS DATE	ACTIONS, JUDGEMENTS, AND NOTES	OPE
08/22/2006	ASSIGNED TO: (TMH) TRUMAN M HOBBS (AR01)	TOR
08/22/2006	CHARGE 01: RULE 32-FELONY/#CNTS: 001 (AR01)	TOR
08/22/2006	INITIAL STATUS SET TO: "P" - PRISON (AR01)	TOR
08/22/2006	FILED ON: 08/16/2006 (AR01)	TOR
08/22/2006	CASE ACTION SUMMARY PRINTED (AR08)	TOR
08/22/2006	CAS ATTACHMENT PRINTED (AR08)	TOR
09/20/2006	PETITIONERS OBJECTION TO THE STATE'S FAILURE TO	DBH
09/20/2006	..SUBMIT A TIMELY CONTROVERING AFFIDAVITS, TIMELY	DBH
09/20/2006	..MO TO DISMISS RULE 32 PETITION & PETITIONER	DBH
09/20/2006	..REQUEST FOR ORAL ARGUMENT	DBH
09/21/2006	MO FOR EXTENSION OF TIME	REG
09/28/2006	09252006 ORDER GRANT MO FOR EXTENSION	REG
10/10/2006	AFFIDAVIT IN SUPPORT	TOR
10/10/2006	TRAVERSE	TOR
10/10/2006	MOTION FOR SUBPOENA DUCES TECUM	TOR
10/23/2006	JUROR FELONY FLAG SET ON FOR INDIVIDUAL (AR10)	REG
10/23/2006	CHARGE 01 DISPOSED BY: DISMISSED ON: 10/20/2006	REG



Case number CC 00-1506.60 TMH  
 ID YR NUMBER  
 (To be completed  
 by Court Clerk)

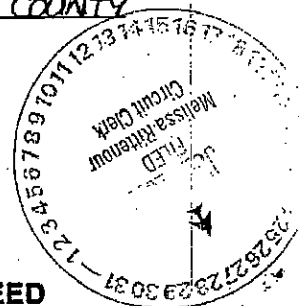
## IN FORMA PAUPERIS DECLARATION

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY  
 [Insert appropriate court]

David L. Watkins  
 (Petitioner)

vs.

State of Alabama  
 (Respondent(s))



### DECLARATION IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS

I, David L. Watkins, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs, or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes \_\_\_\_\_ No ✓
  - a. If the answer is "yes", state the amount of your salary or wages per month, and give the name and address of your employer.  
 \_\_\_\_\_  
 \_\_\_\_\_
  - b. If the answer is "no", state the date of last employment and the amount of the salary and wages per month which you received.  
 \_\_\_\_\_  
 \_\_\_\_\_
2. Have you received within the past twelve months any money from any of the following sources?
  - a. Business, profession, or other form of self-employment?  
 Yes \_\_\_\_\_ No ✓
  - b. Rent payments, interest, or dividends?  
 Yes \_\_\_\_\_ No ✓
  - c. Pensions, annuities, or life insurance payments?  
 Yes \_\_\_\_\_ No ✓
  - d. Gifts or inheritances?  
 Yes \_\_\_\_\_ No ✓
  - e. Any other sources?  
 Yes \_\_\_\_\_ No ✓



If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve months.

3. Do you own cash, or do you have money in a checking or savings account?

Yes \_\_\_\_\_

No ☒

(Include any funds in prison accounts.)

If the answer is "yes", state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes \_\_\_\_\_

No ☒

If the answer is "yes", describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on 5-17-06

(Date)

David L. Watkins  
Signature of Petitioner

### CERTIFICATE

I hereby certify that the petitioner herein has the sum of \$ 23.82 on account to his credit at the institution where he is confined. I further certify that petitioner likewise has the foregoing securities to his credit according to the records of said Draper Court, Inc institution:

5-17-06

DATE

P. S. Brown Asst Clerk  
AUTHORIZED OFFICER OF INSTITUTION

STATE OF ALABAMA  
DEPARTMENT OF CORRECTIONS  
DRAPER CORRECTIONAL FACILITY

AIS #: 219698

NAME: WATKINS, DAVID LEONARD

AS OF: 05/17/2006

MONTH	# OF DAYS	AVG DAILY BALANCE	MONTHLY DEPOSITS
MAY	14	\$1.70	\$0.00
JUN	30	\$6.94	\$96.00
JUL	31	\$0.09	\$0.00
AUG	31	\$9.26	\$106.50
SEP	30	\$11.45	\$25.00
OCT	31	\$6.73	\$39.00
NOV	30	\$7.42	\$30.00
DEC	31	\$16.19	\$60.00
JAN	31	\$9.32	\$25.00
FEB	28	\$31.02	\$120.00
MAR	31	\$10.75	\$60.00
APR	30	\$8.94	\$50.00
MAY	17	\$9.68	\$55.00

# PETITION FOR RELIEF FROM CONVICTION OR SENTENCE

(Pursuant to Rule 32,  
Alabama Rules of Criminal Procedure)

Case Number

ID	YR	NUMBER
----	----	--------

IN THE CIRCUIT COURT OF MONTGOMERY, ALABAMA

David L. Watkins vs. STATE OF ALABAMA  
Petitioner (Full Name) Respondent

[Indicate either the "State" or,  
if filed in municipal court, the  
name of the "Municipality"]

Prison Number 219698 Place of Confinement DEADER CORRECTIONAL CENTERCounty of conviction MONTGOMERY

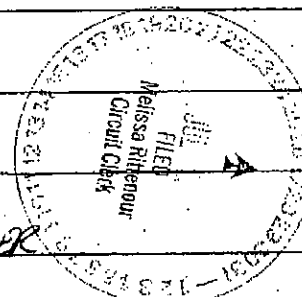
**NOTICE: BEFORE COMPLETING THIS FORM, READ CAREFULLY  
THE ACCOMPANYING INSTRUCTIONS.**

1. Name and location (city and county) of court which entered the judgment of conviction  
or sentence under attack Circuit Court of Montgomery County

2. Date of judgment of conviction MAY 15, 2001

3. Length of sentence LIFE

4. Nature of offense involved (all counts) INTENTIONAL MURDER



5. What was your plea? (Check one)

- (a) Guilty \_\_\_\_\_  
 (b) Not guilty ☒  
 (c) Not guilty by reason of mental disease or defect \_\_\_\_\_  
 (d) Not guilty and not guilty by reason of mental disease or defect \_\_\_\_\_

6. Kind of trial: (Check one)

(a) Jury ☒

(b) Judge only ☐

7. Did you testify at the trial?

Yes ☒

No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒

No ☐

9. If you did appeal, answer the following:

(a) As to the state court to which you first appealed, give the following information:

(1) Name of court Montgomery County Court House

(2) Result Guilty

(3) Date of result May 15, 2001

(b) If you appealed to any other court, then as to the second court to which you appealed, give the following information:

(1) Name of court Criminal Court of Appeals

(2) Result Affirmed

(3) Date of result April 19, 2002

(c) If you appealed to any other court, then as to the third court to which you appealed, give the following information:

(1) Name of court \_\_\_\_\_

(2) Result \_\_\_\_\_

(3) Date of result \_\_\_\_\_

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes \_\_\_\_\_

No ☒

11. If your answer to Question 10 was "yes", then give the following information in regard to the first such petition, application, or motion you filed:

(a) (1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(attach additional sheets if necessary)

- (4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes \_\_\_\_\_

No \_\_\_\_\_

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

- (b) As to any second petition, application, or motion, give the same information:

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(attach additional sheets if necessary)

- (4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes \_\_\_\_\_

No \_\_\_\_\_

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

- (c) As to any third petition, application, or motion, give the same information (attach additional sheets giving the same information for any subsequent petitions, applications, or motions):

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes \_\_\_\_\_ No \_\_\_\_\_

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(d) Did you appeal to any appellate court the result of the action taken on any petition, application, or motion?

(1) First petition, etc. Yes \_\_\_\_\_ No \_\_\_\_\_

(2) Second petition, etc. Yes \_\_\_\_\_ No \_\_\_\_\_

(2) Third petition, etc. Yes \_\_\_\_\_ No \_\_\_\_\_

**ATTACH ADDITIONAL SHEETS GIVING THE SAME INFORMATION  
FOR ANY SUBSEQUENT PETITIONS, APPLICATIONS, OR MOTIONS.**(e) If you did not appeal when you lost on any petition, application, or motion, explain briefly why you did not:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Specify every ground on which you claim that you are being held unlawfully, by placing a check mark on the appropriate line(s) below and providing the required information. Include all facts. If necessary, you may attach pages stating additional grounds and the facts supporting them.

**GROUND(S) OF PETITION**

Listed below are the possible grounds for relief under Rule 32. Check the ground(s) that apply in your case, and follow the instruction under the ground(s):

- ☒ A. The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.

For your information, the following is a list of the most frequently raised claims of constitutional violation:

- (1) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (2) Conviction obtained by use of coerced confession.
- (3) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (4) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (5) Conviction obtained by a violation of the privilege against self-incrimination.
- (6) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (7) Conviction obtained by a violation of the protection against double jeopardy.
- (8) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (9) Denial of effective assistance of counsel.

**This list is not a complete listing of all possible constitutional violations.**

**If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each constitutional violation that you claim, whether or not it is one of the nine listed above, and include under it each and every fact you feel supports this claim. Be specific and give details.**

**B. The court was without jurisdiction to render the judgment or to impose the sentence.**

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

**C. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.**

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

**D. Petitioner is being held in custody after his sentence has expired.**

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

**E. Newly discovered material facts exist which require that the conviction or sentence be vacated by the court, because:**

**The facts relied upon were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to rule 24, or in time to be included in any previous collateral proceeding, and could not have been discovered by any of those times through the exercise of reasonable diligence; and**

**The facts are not merely cumulative to other facts that were known; and**

The facts do not merely amount to impeachment evidence; and

If the facts had been known at the time of trial or sentencing, the result would probably have been different; and

The facts establish that petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he did.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

**F. The petitioner failed to appeal within the prescribed time and that failure was without fault on petitioner's part.**

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

**13. IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS RULE 32.2(b) LIMITS YOU TO ONLY ONE PETITION IN MOST CIRCUMSTANCES. IT PROVIDES:**

**"Successive Petitions.** The court shall not grant relief on a second or successive petition on the same or similar grounds on behalf of the same petitioner. A second or successive petition on different grounds shall be denied unless the petitioner shows both that good cause exist why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that failure to entertain the petition will result in a miscarriage of justice."

- A. Other than an appeal to the Alabama Court of Criminal Appeals or the Alabama Supreme Court, have you filed in state court any petition attacking this conviction or sentence?

Yes \_\_\_\_\_ No ☒

- B. If you checked "Yes," give the following information as to earlier petition attacking this conviction or sentence:

(a) Name of court \_\_\_\_\_

(b) Result \_\_\_\_\_

(c) Date of result \_\_\_\_\_  
(attach additional sheets if necessary)

- C. If you checked the "Yes" line in 13A, above, and this petition contains a different ground or grounds of relief from an earlier petition or petitions you filed, attach a separate sheet or sheets labeled: "EXPLANATION FOR NEW GROUND(S) OF RELIEF."

On the separate sheet(s) explain why "good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and [why the] failure to entertain [this] petition will result in a miscarriage of justice."

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes \_\_\_\_\_ No ☒



15. Give the name and address known, of each attorney who represented you at the following stages of the case that resulted in the judgment under attack:

(a) At preliminary hearing \_\_\_\_\_

(b) At arraignment and plea \_\_\_\_\_

(c) At trial \_\_\_\_\_

(d) At sentencing \_\_\_\_\_

(e) On appeal \_\_\_\_\_

(f) In any post-conviction proceeding \_\_\_\_\_

(g) On appeal from adverse ruling in a post-conviction proceeding \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes \_\_\_\_\_ No \_\_\_\_\_

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes \_\_\_\_\_ No \_\_\_\_\_

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) And give date and length of sentence to be served in the future: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes \_\_\_\_\_ No \_\_\_\_\_

18. What date is this petition being mailed?

Wherefore, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

# PETITIONER'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that the foregoing is true and correct.

Executed on 7-23-06  
(Date)

David L. Watkins  
Signature of Petitioner

SWORN TO AND SUBSCRIBED before me this the 23 day of July, 192006

John F. Peto  
Notary Public

My Commission Expires March 25, 2008

OR \*

## ATTORNEY'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I Swear (or affirm) under penalty of perjury that, upon information and belief, the foregoing is true and correct. Executed on \_\_\_\_\_  
(Date)

\_\_\_\_\_  
Signature of Petitioner's Attorney

SWORN TO AND SUBSCRIBED before me this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
Notary Public

Name and address of attorney representing petitioner  
in this proceeding (if any)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* If petitioner is represented by counsel, Rule 32.6(a) permits either petitioner or counsel to verify the petition.

## **RULE 32. POST-CONVICTION REMEDIES**

### **Rule 32.1 Scope of Remedy.**

Subject to the limitations of Rule 32.2, any defendant who has been convicted of a criminal offense may institute a proceeding in the court of original conviction to secure appropriate relief on the ground that:

- (a) The constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.
- (b) The court was without jurisdiction to render judgment or to impose sentence.
- (c) The sentence imposed exceeds the maximum authorized by law or is otherwise not authorized by law.
- (d) Petitioner is being held in custody after petitioner's sentence has expired.
- (e) Newly discovered material facts exist which require that the conviction or sentence be vacated by the court, because:
  - (1) The facts relied upon were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to Rule 24, or in time to be included in any previous collateral proceeding and could not have been discovered by any of those times through the exercise of reasonable diligence;
  - (2) The facts are not merely cumulative to other facts that were known.
  - (3) The facts do not merely amount to impeachment evidence;
  - (4) If the facts had been known at the time of trial or of sentencing, the result probably would have been different; and
  - (5) The facts establish that petitioner is innocent of the crime for which petitioner was convicted or should not have received the sentence that petitioner received.
- (f) The petitioner failed to appeal within the prescribed time and that failure was without fault on petitioner's part.

### **Rule 32.2 Preclusion of Remedy.**

- (a) **Preclusion of Grounds.** A petitioner will not be given relief under this rule based upon any ground:
  - (1) Which may still be raised on direct appeal under the Alabama Rules of Appellate procedure or by post-trial motion under Rule 24; or
  - (2) Which was raised or addressed at trial; or
  - (3) Which could have been but was not raised at trial, unless the ground for relief arises under Rule 32.1(b); or
  - (4) Which was raised or addressed on appeal or in any previous collateral proceeding; or
  - (5) Which could have been but was not raised on appeal, unless the ground for relief arises under Rule 32.1(b).
- (b) **Successive Petitions.** The court shall not grant relief on a second or successive petition on the same or similar grounds on behalf of the same petitioner. A second or successive petition on different grounds shall be denied unless the petitioner shows both that good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that failure to entertain the petition will result in a miscarriage of justice.
- (c) **Limitations Period.** Subject to the further provisions hereinafter set out in this section, the court shall not entertain any petition for relief from a conviction or sentence on the grounds specified in Rule 32.1(a) and (f), unless the petition is filed: (1) In the case of a conviction appealed to the Court of Criminal Appeals, within two (2) years after the issuance of the certificate of judgment by the Court of Criminal Appeals under Rule 41, A.R.App.P.; or (2) In the case of

a conviction not appealed to the Court of Criminal Appeals, within (2) years after the time for filing an appeal lapses. The court shall not entertain a petition based on the grounds specified in Rule 32.1(e) unless the petition is filed within the applicable two-year period specified in the first sentence of this section, or within six (6) months after the discovery of the newly discovered material facts, whichever is later; provided, however, that the two-year period during which a petition may be brought shall in no case be deemed to have begun to run before the effective date of the precursor of this rule, i.e., April 1, 1987.

**Rule 32.3 Burden of proof.**

The petitioner shall have the burden of pleading and proving by a preponderance of the evidence the facts necessary to entitle the petitioner to relief. The state shall have the burden of pleading any ground of preclusion, but once a ground of preclusion has been pleaded, the petitioner shall have the burden of disproving its existence by a preponderance of the evidence.

**Rule 32.4 Nature of proceeding and Relation to Other Remedies.**

A proceeding under this rule displaces all post-trial remedies except post-trial motions under Rule 24 and appeal. Any other post-conviction petition seeking relief from a conviction or sentence shall be treated as a proceeding under this rule. Proceedings under this rule shall be governed by the Rules of Criminal Procedure, except that the trial court in its sole discretion may allow the taking of depositions for discovery or for use at trial.

**Rule 32.5 Venue.**

Petitions filed under this rule shall be filed in and decided by the court in which the petitioner was convicted. If a petition is filed in another court, it shall be transferred to the court where the conviction occurred.

**Rule 32.6 Commencement of Proceedings.**

- (a) **Form, Filing, and Service of Petition.** A proceeding under this rule is commenced by filing a petition, verified by the petitioner or petitioner's attorney, with the clerk of the court. A petition may be filed at any time after entry of judgment and sentence (subject to the provisions of Rule 32.2(c)). The petition should be filed by using or following the form accompanying this rule. If that form is not used or followed, the court shall return the petition to the petitioner to be amended to comply with the form. The petition shall be accompanied by two copies thereof. It shall also be accompanied by the filing fee prescribed by law or rule in civil cases in circuit court unless the petitioner applies for and is given leave to prosecute the petition in forma pauperis, in which event the fee shall be waived. If the petitioner desires to prosecute the petition in forma pauperis, he shall file the In Forma Pauperis Declaration at the end of the form. In all such cases, the petition shall also be accompanied by a certificate of the warden or other appropriate officer of the institution in which the petitioner is confined as to the amount of money or securities on deposit to the petitioner's credit in any account in the institution, which certificate may be considered by the court in acting upon his application for leave to proceed in forma pauperis. Upon receipt of the petition and the filing fee, or an order granting leave to the petitioner to proceed in forma pauperis, the clerk shall file the petition and promptly send a copy to the district attorney (or, in the case of a petition filed in the municipal court, to the municipal prosecutor).
- (b) **Specificity.** The petition must contain a clear and specific statement of the grounds upon which relief is sought, including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings.
- (c) **Notification of Appellate Court.** If an appeal of the petitioner's conviction is pending, the clerk shall also promptly send a copy of the petition to the appropriate appellate court, noting in the record the date and manner by which it is sent.
- (d) **Assignment of Judge.** The proceeding shall be assigned to the sentencing judge where possible, but for good cause the proceeding may be assigned or transferred to another judge.

**Rule 32.7 Additional Pleadings; Summary Disposition; Amendments.**

- (a) **Prosecutor's Response.** Within thirty (30) days after the service of the petition, or within the time otherwise specified by the court, the district attorney (or, in the case of a petition filed in the municipal court, the municipal prosecutor) shall file with the court and send to the petitioner or counsel for the petitioner, if any, a response, which may be supported by affidavits and a

certified record or substantial portions thereof as are appropriate material to the issues raised in the petition.

- (b) Amendment of Pleadings. Amendments to pleadings may be permitted at any stage of the proceedings prior to the entry of judgment.
- (c) Appointment of Counsel. If the court does not summarily dismiss the petition, and if it appears that the petitioner is indigent or otherwise unable to obtain the assistance of counsel and desires the assistance of counsel, and it further appears that counsel is necessary to assert or protect the rights of the petitioner, the court shall appoint counsel.
- (d) Summary Disposition. If the court determines that the petition is not sufficiently specific, or is precluded, or fails to state a claim, or that no material issue of fact or law exists which would entitle the petitioner to relief under this rule and that no purpose would be served by any further proceedings, the court may either dismiss the petition or grant leave to file an amended petition. Leave to amend shall be freely granted. Otherwise, the court shall direct that the proceedings continue and set a date for hearing.

#### Rule 32.8 Prehearing Conference.

In order to expedite the proceeding, the court may hold a prehearing conference, at which the petitioner need not be present if he or she is represented by counsel who is present. The conference may be by telephone. Whether held by telephone or in person, the conference shall be stenographically recorded or tape-recorded. At the prehearing conference, the court may order a showing by the petitioner of the materiality of the testimony expected to be presented by any witness subpoenaed by the petitioner, supported by affidavit where appropriate, and, upon petitioner's failure to show the requisite materiality, may order that the subpoena for such witness not be issued or be quashed.

#### Rule 32.9 Evidentiary Hearing.

- (a) Hearing. Unless the court dismisses the petition, the petitioner shall be entitled to an evidentiary hearing to determine disputed issues of material fact, with the right to subpoena material witnesses on his behalf. The court in its discretion may take evidence by affidavits, written interrogatories, or depositions, in lieu of an evidentiary hearing, in which event the presence of the petitioner is not required, or the court may take some evidence by such means and other evidence in an evidentiary hearing. When facilities are available, the court may in its discretion order that any evidentiary hearing be held at the place of petitioner's confinement, giving at least seven (7) days' notice to the officer in charge of the confinement facility. A verbatim record of the hearing shall be made.
- (b) Testimony of Petitioner. The petitioner may be called to testify at the hearing by the court or by either party.
- (c) Decision. If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the conviction, sentence, or detention; to any further proceedings, including a new trial; and to any other matters that may be necessary and proper.
- (d) Findings of Fact. The court shall make specific findings of fact relating to each material issue of fact presented.

#### Rule 32.10 Appeal.

- (a) Who May Appeal; Court to Which Appeal is Taken. Any party may appeal the decision of a circuit court according to the procedures of the Alabama Rules of Appellate Procedure to the Court of Criminal Appeals upon taking a timely appeal as provided in Rule 4, Alabama Rules of Appellate Procedure. Any party may appeal a decision of a district or municipal court according to existing procedure.
- (b) Release of Petitioner. The petitioner shall not be released on bond pending appeal by either party. Release of the petitioner on bond pending a retrial after an order requiring retrial has become final, or after the time for filing an appeal from such an order has lapsed, shall be governed by the laws and rules governing release on bond pending an initial trial.

IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY

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DAVID L. WATKINS  
Petitioner,

V.

STATE OF ALABAMA  
Plaintiff

---

On Post-Conviction relief from the  
Circuit Court of Montgomery County.  
Alabama Case Number: CC 00-1506.60

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BRIEF IN SUPPORT OF PETITIONER,  
DAVID L. WATKINS, RULE 32

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### STATEMENT OF THE CASE AND FACT

The Grand jury of said County Charge that before the finding of the indictment,

David Leonard Watkins, alias

David L. Watkins, Alias

David Watkins,

Whose name is otherwise unknown to the Grand jury, and/or accomplice did intentionally cause the death of another person, John Ferrell, by shooting with a gun, in violation of section §13A-6-2 of the Code of Alabama.

(R.15-16) The indictment resulted from an incident in which John Ferrell was beaten and then killed from a gunshot wound to the head. On the night of the incident, a dispute arose during a game of cards, which was later continued outside of the house of the co-defendant Robert Watkins. Petitioner, while under the influence of alcohol, admitted that he did in fact assault the victim. (R. 85-86) The body of the victim was later found in a ditch at the end of the street.

Two other co-defendants, Latoya Davis and Robert Watkins, were also involved. (R. 277) All three were convicted of murder and each received a life sentence. (R. 287)

On September 28, 2000, Petitioner was arraigned and entered a plea of not guilty to the charge. On May 15, 2001 Petitioner had a jury trial. (R. 1)

Trial Counsel for Petitioner never filed any written motions nor submitted any jury instructions to prevent a denial of due process, which is a constitutional violation of Petitioner's 6<sup>th</sup> and 14<sup>th</sup> Amendment Rights. (See Petitioner's EXHIBIT 3 at R.270-274)

On Oct. 22, 2001, the trial court held a sentencing hearing (R. 277). As noted, Watkins was sentenced to serve life imprisonment (R. 287). He was additionally ordered to pay \$7,600.39 in restitution, \$50.00 to the Crime Victim Assessment Fund, and \$150.00 in attorney fees (EXHIBIT 8). Oral notice of appeal was given the date of sentencing (EXHIBIT 8 and PETITIONER'S EXHIBIT 3 at R.289).

On February 6, 2002, Appellate Counsel for Petitioner submitted brief on Direct Appeal raising only (2) two issues. These issues were not properly raised before the Criminal Court of Appeals. Appeal was affirmed by memorandum on April 19, 2002 and

certificate of judgment was issued on May 7, 2002, thereby concluding Petitioner's appeal. (See Petitioner's Exhibit 4)

After the Appellate Court's decision apparently, Appellate Counsel failed to inform Petitioner of the outcome of his appeal. (See exhibit 15, 16, 17, 18, 19). THIS  
RULE 32 POST-CONVICTION REMEDY ENSUES

### ARGUMENT

The fifth, sixth, and fourteenth Amendment of the Constitution of the United States are Art I 6 of the Alabama Constitution requires a new trial, or other relief as law requires. Because Petitioner was deprived of his liberty due to the denial of effective assistance of Appellate Counsel, due to his failure to raise non-frivolous issues in a motion for new trial as follows: The denial of the effective assistance of trial counsel, due to trial counsel failure to submit written requests that the trial court instruct the jury.

(1) On a lesser included offense of manslaughter regarding intoxication and (2) properly instruct the jury on an particularize intent to kill issue with regard to accomplice liability.

In fact, Appellate Counsel never even filed a motion for new trial to preserve issues for appellate review.

### ALLEGATIONS

1. Petitioner's Appellate Counsel was ineffective for his failure to raise in a motion for new trial the issues of, denial of the effective assistance of trial counsel, due to trial counsel failure to submit a written request that the trial counsel instruct the jury on an lesser included offense of manslaughter regarding intoxication.

As you can see from (Petitioner's exhibit 3 at R. 270-274) The trial court did not instruct the jury on the lesser-included offense of manslaughter-regarding intoxication. Since the evidence undisputedly reflects that all the defendants and the victim were drinking heavily and likely intoxicated at the time of the alleged murder, See Petitioner's exhibit 1 at R. 40,46 ) and the Petitioner's trial counsel, indeed, should have submitted a written request that the trial court instruct the jury on the lesser included offense of manslaughter regarding intoxication.

Because, it is axiomatic that, in a criminal case the instructions given to the jury must require the jury to find every element of the crime charged, under the proper standard of proof. See *Cabana v. Bullock*, 474 U.S. 376, 384, 106 S.Ct. 689, 695, 88 L.Ed.2d 704 (1986).

Also, in *Gray v. State* 482 So.2d 1318, 1319 [Ala.Crim.App. 1985] "When the crime charged involves specific intent, such as murder, and there is evidence of intoxication the trial judge should instruct the jury on the lesser included offense of manslaughter. (See also *McNeil*, 496 So.2d at 109, *Moore v. State*, 647 So.2d 43 [Ala.Cr.App. 1994])

Therefore, "Whether the level of intoxication is sufficient to negate an essential element of the crime, such as intent is a question of fact to be resolved by the jury. *Adams v. State*, 484 So.2d 1160 (Ala.App. 1985)

Because, the Sixth Amendment requires that all elements of the crime be found by the jury-not just by appellate judge's reviewing the record. *Carella v. California*, 491 U.S. at 268-69, 109 S.Ct. 2419, 2422, 105 L.Ed.2d 218 (1989) (Scalia, J., Concurring), (quoting, *U.S. v. Caldwell*, 989 F.2d 1056, 1061 (9<sup>th</sup> Cir. 1993) In fact, the decisions of the Supreme court of Alabama are to the effect that every accused is entitled to have charges given, which would not be misleading, which correctly state the law of his case, and which are supported by [any] evidence,

however weak, insufficient, or doubtful in credibility. *Burns v State*, 229 Ala. 68, 155 So. 561 (1934). (Quoting) *Ex Parte Long*, 600 So.2d 982 (Ala. 1992).

Moreover, in federal courts, the defendant is entitled to an instruction on a lesser included offense of the evidence would permit a jury rationally to find him guilty of the offense and acquit him of the greater, *Beck v. Alabama*, 447, 625, 65 L.ed 2d 392, 100 S.Ct. 2382.

2. Petitioner's Appellate Counsel was ineffective for his failure to raise the issue of a motion for new trial the denial of the effective assistance of trial counsel, due to trial counsel failure to submit a written request that the trial court properly instruct the jury on a particularize intent to kill issue with regard to accomplice liability.

In this present case, in relevant part, the trial court charge to the jury reflected the following:

"Now, you've heard the attorneys mention aid and abet. The law in Alabama is that a person is legally accountable for the behavior of another person constituting a crime if with intent to promote or assist the commission of that crime he aids or abet such other person in committing the crime. In other words, there's really no distinct—distinction between principals and accessories in the commission of an offense.

"Aid and abet comprehends all assistance rendered by acts or words of encouragement, support or presence, actual or constructive, to render assistance, should it become necessary. However, mere presence without giving aid or encouragement at or

before the commission of the crime does not constitute aiding and abetting. But where there are two or more persons who enter into a common enterprise and a criminal offense is contemplated, then each could be said to be a co-conspirator. And if the unlawful act is carried out, each is guilty of the offense. And, again, any word or act contributing to the commission of the offense or intended to incite or encourage its accomplishment makes one a co-conspirator.

"Now, it's a jury question for you to decide whether or not the defendant aided or abetted or was a co-conspirator in the commission of the offense here. And if you're convinced beyond a reasonable doubt that he was present with a view to render aid should it become necessary, then he could be found guilty of being an aider or abettor.

"However, if you're not convinced beyond a reasonable doubt that he aided, abetted, and/or conspired to commit the offense, then you would not be able to determine that he aided and abetted in the offense." (See Petitioner's exhibit 3 at R. 270-71 ).

The Due Process clause of the fourteenth Amendment denies states the power to deprive the accused of his liberty unless the prosecution proves beyond a reasonable doubt [every] element of the charged offense. Jury instructions [relieving] states of this burden violate a defendant due process rights.

Carella v. California 491 US at 265. Because the sixth Amendment requires that all elements of the crime be found by the Jury not just by appellate judge's reviewing the record. Carella v. California 491 vs at 268-69, 109 S.Ct. 2419, 2422, 105 L.Ed.2d 218 (1989) (Scalia, J., Concurring), (quoting U.S. v. Caldwell, 989 F.2d 1056, 1061 (9<sup>th</sup> Cir. 1993).

Since Mitchell v. State, 210 Ala. 457, 98 So. 285 (1923), it has been uniformly held that it is the mandatory duty of a trial judge to instruct the jury orally on the different and distinguishing elements of the offense charge and that in the absence of such instruction from the court, the jury could not intelligently comply with their duty as jurors. See Strickland v. State, 771 So.2d 1123, 1128-29 (Ala.200).

The Petitioner is content that the [key elements of accomplice liability] are encouragement or presence with a view to render aid should it become necessary. "When liability is predicated on the latter, it is essential that the principle be aware of the accomplice's support and willingness to lend assistance. Reeves v. State, 530 So.2d 894, 897 (Ala.Crim.App. 1988)

As we have read and seen earlier from (Petitioner exhibit 3 at R. 270-71 the trial court did not clearly charge the jury on the essential element that the principle has to be aware of the accomplice has to be aware of the accomplice's support and willingness to lend assistance to kill the victim.

In Duncan v. State, 827 So.2d 838, 848 (Ala.Crim.App. 1999) the trial court correctly instructed the jury on the particularize intent to kill issue. Furthermore, the trial court correctly instructed the jury with regard to accomplice liability relevant part as follows.

"The mere presence of a defendant, who intends to assist with the criminal act, should it become necessary, is aiding and abetting if, and only if, the one who commits the act knows of the defendant's presence and 'the intent to assistance in [that] offense.'"

This so being, since in this present case the key element that the Principle knew that the Petitioner was assisting him to kill the victim is absent from the court's oral charge the



jury could not intelligently comply with their duty as jurors. Moreover, the prosecution was relieved of finding [every] element of the charge offense beyond a reasonable doubt.

It has been well established, in the, federal courts, that:

"It will be observe that all those definitions have nothing whatsoever to do with the forbidden result would follow upon the accessory's conduct; and that they all demand that he in some sort [associated] himself with the venture, that he [participated] in it as in something he wished to bring about, that he seek by action to make it succeed.

All the words used-even the colorless, 'abet'-carry on implication of purposive attitude towards it." See Hill v. State, Ala.Cr.App., 348 So.2d 848,851

Take not, the above statement was given by Judge Learned Hand, in which his statement was adopted by the Supreme Court in Nye and Nissen v. United States, 366 U.S. 613, 619, 69 S.Ct 766, 933 L.Ed. 919 (1949); also see Supra, Hill at 851.

In United States v. Ortiz-Loya, 777 F.2d 973, 980 (5<sup>th</sup> Cir. 1985) the court define the word 'ASSOCIATED' as follows:

"[Associated] means that the defendant share in the criminal intent of the principle."

Therefore, in such absence of the assaid element of aiding and abetting the Petitioner's counsel hurt the Petitioner defense-that he did not intend to promote or assist the Principle by aiding and abetting him to cause the death of the victim.

In order to prevail on a claim of ineffective-assistance-of-counsel, a defendant must show (1) that his counsel's performance was deficient, and (2) that he was prejudice by the deficient performance. Strickland v. Washington, 466 U.S. 668,

104 S.Ct. 2052, 2064, 80 L.Ed.2d 674. See Strickland v. State, 771 So.2d 1123, 1125 (Ala.Crime.App. 1999).

Nevertheless, the Supreme Court set out an exception to the Strickland test, however, in United States v. Cronic, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984), was decided on the same day. The court in Cronic determined that there are "circumstances that are so likely to prejudice the accused that the cost of litigation their effect in a particular case is unjustified, "Cronic", 466 U.S. at 658, 104 S.Ct. at 2039. A [petitioner] whose case presents such a circumstance need not make the specific showing of prejudice required by Strickland. Id. at 659, 104 S.Ct. 2039. An ineffective assistance claim should be analyzed under Cronic, rather than Strickland, if the defendant either "is denied counsel at a critical stage of his trial" or if "counsel entirely fails to subject the prosecution case to meaning adversarial testing." Id. at 659, 104 S.Ct. 2039 (Quoting Hunter v. Moore, 304 F.3d 1066, 1069 (11<sup>th</sup> Cir, 2002).

Thus, the adversarial process protested by the sixth Amendment required that the accused have "counsel acting in the role of an advocate." R1.

n1. "To satisfy the constitution, counsel must function as an advocate for the defendant as opposed to a friend of the court's." Indeed, an indispensable element of the effective performance of [defendant counsel's] responsibilities is the ability to independently of the Government and to oppose it in adversary litigation," Cronic, Id. at n19.

The right to the effective assistance of counsel is thus the right of the accused to require to prosecution's case to survive the crucible of meaning adversarial testing. Cronic, 466 U.S. at 456-57, 104 S.Ct. 2039.

Therefore, in this instance, the court must respect what the *Cronic*, teaches; that claims such as this one should be reviewed under the standard laid out in *United States v Cronic*, 466 U.S. 648, 104 S. Ct. 2039, 80 L.ed 2d. 657 (1984) Due to the cost of counsel not submitting the said written request and the trial court not instructing the jury on the lesser included offense of manslaughter-regarding intoxication and (2) properly instruct the jury on a particularize intent to kill issue with regard to- accomplice liability.

#### DISCUSSION

Petitioner, who has been represented by counsel below claims that he was denied effective assistance of counsel on his direct appeal because Appellate Counsel failed to raise the claim of ineffective assistance of counsel in a motion for new trial before the trial court as required under Rule 24.1 (b), A.R. Crim. P.

Petitioner's Appellate Counsel claims that: "Appointed trial counsel for the Appellant never filed any written motion whatsoever and rarely objected or otherwise attempted to preserve issues of potential error. The appeal is therefore limited on preserved issues. (See Petitioner's Exhibit 5, at page 6 & 9) However, had Appellate Counsel presented these facts before the trial court in the appropriate motion for a new trial as required under Rule 24.1(b), A.R. Crim. P., it would have given him enough time to review the trial's transcript and identify any deficient trial counsel performance and move the trial judge for a new trial before Petitioner's case was heard on appeal.

In Ex Parte Jackson the court stated.

"We encourage counsel, whenever possible, to ascertain any possible defect in the trial process and to make an issue of that defect in an appropriate motion for new trial."

Failure to include a reasonably ascertainable issue in a motion for a new trial will result in a bar to further argument of the issue on appeal and in Post-Conviction Proceedings, "(See Ex Parte Jackson, 598 So.2d 895 (Ala. 1992))

Nevertheless, Petitioner raises the following issues in this Rule 32 Petition as required and recognized from the holding of Ex Parte Ingram, 675 So.2d. 863 (Ala. 1996).

In furtherance, to be more specific on the claim of the denial of effective assistance of counsel is that : (1) the four page Argument (See Petitioner's exhibit 4,5,6,) the Petitioner's Appellant Counsel filed on appeal did not even meet the minimum standards for a "frivolous appeal" brief because Issue one was not preserved for Appellate review, due to this is not a death-penalty case, therefore, the Court of Criminal Appeal cannot review it for plain error, as Petitioner's Appellate Counsel requested (See MEMORANDUM, which is Petitioner's exhibit 4). As for Issue Two Petitioner's Appellate Counsel raised, is no point of error, which would have entitled Petitioner's to reversal of his conviction.

The specific points the Petitioner claims his appellate Counsel should have raised are: (1) Petitioner received ineffective assistance of counsel at trial, due to counsel failure to submit written request that the court charged the jury on an lesser included offense of manslaughter and properly instruct the jury on an particularize intent to kill issue-with regard to accomplice liability, thereby, depriving the Petitioner of his liberty without due

process of law, because the Due Process Clause of the Fourteen Amendment denies States the Power to deprive the accused of his liberty unless the prosecution proves beyond a reasonable doubt [every] element of the charged offense. Jury instructions [relieving] states of this burden violate a defendant due process rights. Carella v. California, 491 US at 265.

Since a layman will ordinarily be unable to recognize counsel's errors and to evaluate counsel's professional performance, consequently a criminal defendant will rarely know that he has not been represented competently until after trial or appeal. Kimmelman v. Morrison, 477 US 365, 378, 91 L.Ed 2d 305, 321, 106 S.Ct. 2574. Therefore, an accused is constitutionally entitled to the effective assistance of counsel on a direct appeal as of right. Evitts v. Lucey, 469 US 387, 105 S.Ct. 830, 33 L.Ed 2d 821 (1985). The primary question here is whether or to what extent prejudice must be shown from denial of such right in order for the Petitioner to obtain Post-Conviction relief

Must Petitioner demonstrate that this denial of the effective assistance of counsel prejudiced him, at least in the sense that had his counsel not been this deficient his conviction would likely have been reversed? Penson provides the proper framework for analysis in their connection. In Penson, the Court distinguished between two types of the denial of effective assistance of appellate counsel: first, those in which the deficiency consists of failure to raise (or properly brief or argue) one or more specific issues or the like; and or more specific issues or the like; and second, those in which there has been an actual or constructive complete denial of any assistance of appellate counsel. 109 S.Ct at 354. In the first type of case, prejudice must apparently be shown, as required by Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In

the second type of case, prejudice is 'presumed', and neither the prejudice test of Strickland nor the harmless error analysis of Chapman v. California, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967) is appropriate. Penson, 109 S.Ct. at 354.

Here, Counsel's deficiencies clearly come closer to fitting in the second or total denial of counsel category, than in the first category, that of counsel omitting one or more discrete lapses from minimum professional standards. At the trial level, at least, it is clear that merely because counsel is 'physically' present throughout does not necessarily mean that there has not been total denial of counsel. See United States v. Cronin, 466 US 648, 104 S.Ct 2039, 2047, 80 L.Ed.2d 657 (1984) ("Counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable"). Here Petitioner's appellate counsel did [nothing] to attempt to bring before the Court that Petitioner was denied the effective assistance of trial counsel, which thereby, deprived him of a fair trial to aid Petitioner's appeal, beyond the initial perfecting of the appeal itself.

Therefore, Petitioner is comfortable in not requiring to meet the Strickland, standard of showing, at the least, that there is a reasonable probability that his conviction would have been reversed had he had the effective assistance of appellate counsel. Because the issues that Petitioner claims should have been raised on appeal are certainly not frivolous claims, and at the same time of appeal they may very well have led to a reversal of Petitioner's conviction.

Based upon the foregoing, Petitioner urges this court to protect and safeguard every right guaranteed by the United States Constitution, by granting Petitioner's Post

Conviction issues unless the State affords Petitioner an out-of-time appeal within such reasonable time as the court may fix, and for further proceedings not consistent herewith.

## ARGUMENT II

The fifth, sixth, and fourteenth Amendment of the United States Constitution, requires a new trial, or other relief as law requires; because Petitioner is being deprived of his liberty with our due process; because Petitioner was convicted on a defective indictment, due to the indictment not being accompanied with such a statement of facts and cause of the accusation of the specific offense, coming under the general description which Petitioner was charged.

Omitting the formal parts, the indictment reads as follows:

The grand jury of said County Charge that before the finding of the indictment,

David Leonard Watkins, alias  
David L. Watkins, alias  
David Watkins,

Whose name is otherwise unknown to the Grand jury, and/or accomplice did intentionally caused the death of another person, John Ferrell, by shooting with a gun, in violation of section 13A-6-2 of the Code of Alabama, (See Petitioner exhibit 7)

Petitioner contends that the above indictment is defective in substance that it will not support the judgment of conviction. In the United States Constitution, Article VI CL

"This Constitution and laws of the United States which shall be made in pursuance thereof, and all treaties made, or which in shall be made under the authority of the United States, shall be the Supreme Law of the Land; and the Judges in every state

shall be bound thereby. Anything in the Constitution or laws of any state to the contrary not withstanding.

The United States Constitution's fourteenth Amendment states, in pertinent part:

"No person shall be deprived of his liberty without due process of law."

In *City of Dothan v. Holloway* 501 So.2d 1136, (Ala.1986); the Court then quoted from the Alabama Constitution (1901), §6, and then stated:

"The manifest purpose of this provision is to accord to every citizen security against the arbitrary action of those in authority, and to place him under the protection of the 'law of the land', which is synonymous with the expression, 'due process of law'.

The word "shall" is used in the United States Constitution Article VI [2] and the fourteenth Amendment of the United States Constitution. The word "shall" generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive. *Gutierrez De Martinez v. Labagno*, 132 L.Ed.2d 375, 393 (1995); Also see, *State v. Redmon*, 885 So.2d 850 (2004).

The United States Constitution [Supreme Law of the Land] has been expanded by the decision of the United State Supreme Courts. See *Clack Law Dictionary*, Due Process, p. 500-501 (6<sup>th</sup> ed. 1990). Therefore, the United States Constitution, and the Supreme Court shall be bound by the 'Supreme law of the land.'



In *Russell v. United States*, 8 L.Ed.2d 240, 251, The United States Supreme Court stated:

"It is an elementary principle of criminal pleading, that where the definition of an offense, whether it be at common law or by statute, includes generic terms, it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition; but it must state the species, -it must descend to particulars, an indictment not framed to appraise the defendant "with reasonable certainty to the nature of the accusation against him is defective although it may follow the language of the statute.

In an indictment upon a statute, it is not sufficient to set forth the offense in the words of the statute, unless those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished undoubtedly the language of the statute may be accompanied with such a statement of the fact and circumstances as will inform the accused of the specific offense, coming under the general description with which he is charged." (See exhibit 7)

In *Russell*, *supra*, the Court has emphasized two of the protections, which an indictment is intended to guarantee, reflected by two of the criteria by which the sufficiency of an indictment is to be measured. These are:

**First:** Whether the indictment contains the elements of the offense intended to be charged, and sufficiently appraises the defendant of what he must be prepared to meet and,

Secondly: in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal conviction.

In the case at hand, the State contends that Petitioner committed the crime of intentional murder as an accomplice. However, the language of the indictment does not set forth the necessary means by which Petitioner committed the offense (*Hornsby v. State*, 94 Ala. 35, 10 So. 522; *Nelson v. State*, 50 Ala.App. 285). In order to properly inform the accused of the "nature and cause of the accusation, within the meaning of the constitution and of the rules of the common law; Not only must all the element of the offense be stated in the indictment, but that also they must be stated with clearness and certainly, and with a sufficient degree of particularity to identify the transaction to which the indictment relates as to place, persons, things and other details.

The accused must receive sufficient information to enable him to reasonably understand, not only the nature of the offense, but the particular act or acts touching which he must be prepared with his proof; and when liberty and perhaps his life, are at stake, he is not to be left so scantily informed as to cause him to rest his defense upon the hazard of being surprised by proofs on the part of the prosecution of an entirely different act or series of acts, at least so far as surprise can be avoided by reasonable particularity and fullness of description of the alleged offense. (*Italics Supplied*) *United States v. Potter*, 1 Cir 56 F.83, 89

At common, it was necessary to set forth in an indictment for murder the means by which an offense was committed. (Hornsby v. State, 94 Ala. 55, 10 So. 522; Nelson v. State 50 Ala.App. 285)

An indictment must state the facts constituting the offense, in ordinary and concise language, in such a manner as to enable a person of common understanding to know what is intended. It must likewise inform the accused not only of the nature of the offense, but also of the particular act or means by which it was committed. (See Ala. Code 1975 Title 15-8-25. Indictment)

It states as follows:

**III. Offense must be charged with certainty.**

"An indictment not framed to apprise the defendant with reasonable certainty, of the nature of the accusation against him is defective, although it may follow the language of the statute. (Russell, 369)

"Furthermore, if the indictment tracks the language of the statute, it must be accompanied with such a statement of facts and circumstances as will inform the accused of the specific offense, coming under the general description, with which he is charged. "Id at 765, 82 S.Ct. at 1048; See also Hamling v. United States, 418 U.S. 87, 117-18, 94 S.Ct. 2887, 2907-8, 41 L.Ed.2d 590 (1974)

The indictment in this case does not appraise the accused of all the requirements under the 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendments of the Constitution.

Again, omitting the formal parts, the indictment reads as follows:

The grand jury of said County charge that, before the finding of the indictment,

David Leonard Watkins, alias

David L. Watkins, alias

David Watkins,

Whose name is other wise unknown to the grand jury and/or accomplice did intentionally caused the death of another person, John Ferrell, by shooting with a gun, in violation of section 13A-6-2 of the Code of Alabama,

"When the indictment uses generic terms, it must state with particularity. (Russell, 369 U.S. at 763, 82 S.Ct. at 1047)

An indictment must also enable the defendant to enter a plea that will bar any "future prosecutions for the same offense." (Hamling 418 U.S. at 117, 94 S.Ct. at 2907.)

However, this indictment charges that Petitioner "did as an accomplice, intentionally caused the death of another, by shooting with a gun.

Petitioner is apprised of the charges against him to this extent but he could not know the contentions of the state as to how he committed murder. Under the law, a person acts intentionally when it is his purpose to cause the death of that person. An intent may be inferred from the facts and circumstances surrounding the whole transaction or incident as well as the conduct of the defendant.

So in order to convict here, the State must prove beyond a reasonable doubt, first: that John Farrell is dead. And, second that the defendant, David L. Watkins, caused the death of Mr. Farrell by shooting him or aiding and abetting in committing the act or acts which caused the death of the deceased.

Therefore, Petitioner could not have properly prepare his defense, because the means in which to show how he could have been an accomplice-is absent from the indictment. There are numerous other cases holding that where an indictment fails to state any offense such defect must be noticed despite the absence of any attack on it in the court below. *Brown v. State*, 32 Ala.App. 246, 24 So.2d 450; *Raisler v. State*, 55 Ala. 64; *Emmonds v. State*. Also, see *Duncan v. State* in regarding aiding and abetting. 827 So.2d 838, 848 (Ala.Crim.App.1999)

The United States Supreme Court have ruled in numerous cases that, "For an indictment to be valid, it must" contend [] the elements of the offense intended to be charged, and sufficiently apprise [] the defendant of what he must be prepared to meet. *Russell v. United States*, 369 U.S. 749, 763, 82 S.Ct. 1038, 1047, 8 L.Ed.2d 240 (1962)(internal quotations omitted); *United States v. Sanchez*, 269 F.3d 1250, 1314 (11<sup>th</sup> Cir. 2001)(en bench), cert. Denied, 535 U.S. 942, 122 S.Ct. 1327, 152 L.Ed.234 (2002).

In addition, to the language of the statute relating to the indictments. Title 15, Section 232, Code of Alabama 1940, says:

"The Constitutional right of an accused to demand the nature and case of his accusation is not a technical right, but is fundamental and essential to the guaranty that no person shall be deprived

of his liberty except by due process of law, nor be twice put in jeopardy for the same offense.

"An indictment should be sufficiently specific in its averments in four prime aspects to afford this guaranty:

- (1) To identify the accusation or charge lest the accused should be tried for an offense different from that intended by the grand jury.
- (2) To enable the defendant to prepare for his defense.
- (3) That the judgment may inure to his subsequent protection and foreclose the possibility of being twice put in jeopardy for the same offense.
- (4) To enable the court, after conviction to pronounce judgment on the record.

This protection which the law furnishes to one charged with a crime has not been relaxed or relented by Alabama's courts throughout its history.

"The law does not contemplate that a person charged with a crime should be brought to trial and stand before the courts of our land unaware or in doubt of the nature and character of the accusation against him."

In a Supreme Court case by way of certiorari, *Gayden v. State*, 262 Ala. 468, 80 So.2d 501. There, Mr. Justice Simpson, speaking for the majority, said:

"Indictments must always conform to the mandates of organic law. The emphasis in our case 'that in all criminal prosecutions, the accused has the right \*\*\* to demand the nature and cause of the accusation' now §6 of the Constitution of 1901- is not meaningless tautology, but one of the cornerstones of our Bill of Rights.

Furthermore, where the means is unknown it is proper to allege in the indictment by means to the grand jury unknown. *Eatman v. State*, 139 Ala. 67, 36 So. 16; *McDonald v. State*, 241 Ala. 172, 1 So.2d 658."

We are further restrained in this case by the requirements of the fourteenth Amendment of the Constitution. The following utterances by our Federal Courts are pertinent. No principle of procedural due process is more clearly established than the notice of the specific charge, and a chance to be heard in a trial of the issue raised by that charge, if desired, are among the constitutional right of every accused in a criminal proceeding in all Courts, State or Federal. *Cole v. State of Arkansas*, 92 L.Ed 644, 333 U.S. 196, 201, 68 S.Ct. 514, 517, 'The Petitioner charged that he had been denied any real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process. *Smith v. O'Grady*, 312 U.S. 329, 334, 61 S.Ct. 572, 85 L.Ed. 859.

In *Cole v. State of Arkansas*, 333 U.S. 196, 68 S.Ct. 514, 92 L.Ed. 644, the Supreme Court said:

"No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by the charge, are among the

constitutional rights of every accused in a criminal proceeding in all courts, State or Federal." See, Supra, Nelson at 289;

CONCLUSION

The conviction in this case cannot stand as it offends the first requirement of constitutional due process. The failure to charge an offense and the obvious harm to the defendant resulting there from, is the kind of defect involved in due process of law and it cannot be waived.

Petitioner respectfully urges this court for this cause to reverse and remand for a new trial.

Respectfully submitted,

David L. Watkins

David L. Watkins

Petitioner



EXHIBIT-1

IN THE CIRCUIT COURT  
OF  
MONTGOMERY COUNTY, ALABAMA

STATE OF ALABAMA,

Plaintiff,

vs.

DAVID LEONARD WATKINS,

Defendant.

CASE NO: CC-00-1506



\* \* \* \* \*

PROCEEDINGS in the above-styled  
cause before the Honorable Sally M. Greenhaw,  
Presiding Judge, in Courtroom 3-C, Montgomery  
County Circuit Court, 251 South Lawrence Street,  
Montgomery, Alabama, commencing on Monday,  
May 14, 2001.

\* \* \* \* \*

Meridith D. Newman, CSR  
Official Court Reporter

APPEARANCES

FOR THE STATE:

Mr. Michael Kidd  
Montgomery County Deputy District  
Attorney  
251 South Lawrence Street  
Montgomery, Alabama 36078

FOR THE DEFENDANT:

Mr. Winston Durant  
Attorney at Law  
445-C South McDonough Street  
Montgomery, Alabama 36104

\* \* \* \* \*

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4

1  
2 THE COURT: Good morning. I'm Judge  
3 Sally Greenhaw, and we're about to start a trial.  
4 And I apologize for the delay, but Monday mornings  
5 are just slow.

6 But I'm Judge Sally Greenhaw, and we're about  
7 to start a criminal case. The name of or the style  
8 of the case is State of Alabama versus David  
9 Watkins. Mr. Watkins is charged with the murder of  
10 John Christopher Farrell that is alleged to have  
11 occurred on or about October the 19th of 1999 in  
12 the vicinity of the Seven Hundred block of Keystone  
13 Street here in Montgomery. And I'm mentioning that  
14 to you, because I'm going to ask you in a moment if  
15 you know or if you've heard anything about the  
16 case.

17 But, first of all, I'm going to introduce you  
18 to everyone seated at counsel table. And the  
19 State, today, is represented by Michael Kidd and  
20 Will Powell. And seated next to them is Willie Mae  
21 Davis, and she is the mother of the -- of John  
22 Christopher Farrell. And down at this end is the  
23 defendant, David Watkins, and his attorney,  
24 Winston Durant.

25 I'm now going to ask you to introduce yourself

5

1 to us. When I call your name -- and if I  
2 mispronounce someone's name, please correct me --  
3 but when I call your name, if you would please  
4 stand -- and I know this information is on your  
5 questionnaire, but this gives the attorneys an  
6 opportunity to put your face with your  
7 questionnaire -- so when I call your name, if you  
8 would please stand. If you're employed, tell us  
9 where. If you're married, the same about your  
10 spouse, if she's -- if he or she is employed or  
11 not. If you're fortunate enough to be retired, the  
12 occupation from which you're retired. That would  
13 also apply to your spouse. Or if you're not  
14 working or in school, we need to know that as well.

15 (Roll call was taken.)

16 THE COURT: I'm going to be asking  
17 some questions. If anyone needs to respond, if  
18 you'll stand, repeat your name, and give any  
19 details that may be helpful. When I refer to  
20 family members, I'm referring to someone in your  
21 immediate family, your spouse, children,  
22 grandchildren, brother, sisters, parents,  
23 grandparents, or if there's a particularly close  
24 friend that you think it would be helpful for the  
25 attorneys to have that information, you can tell us

6

1 about that as well.

2 I'd introduced you to everyone at counsel  
3 table, and I'm now going to ask the same question  
4 about each of them as well as some witnesses, and I  
5 may not repeat it each time. But what I need to  
6 know is if you know any of them or related to them  
7 by blood or marriage?

8 Again, the State, today, is represented by  
9 Michael Kidd and Will Powell. And our DA in  
10 Montgomery County is Ellen Brooks. Anyone know any  
11 of them or related to them by blood or marriage?

12 (No response.)

13 THE COURT: And, again, down at the  
14 end is Willie Mae Davis, and her son was John  
15 Christopher Farrell. Does anyone know -- or did  
16 they know Mr. Farrell or know Ms. Davis?

17 (Juror raises hand.)

18 THE COURT: Okay. If you'll just  
19 stand and tell us who you knew, and don't give us  
20 any details. We may need to talk to you in  
21 private. And we'll start -- yes ma'am?

22 PROSPECTIVE JUROR: Okay. I don't  
23 know them. But by them being in the Baptist  
24 Church, I do know that her husband is a pastor.

25 THE COURT: Okay. But you don't know

7

1 to their church or -- you just know them in the  
2 community?

3 PROSPECTIVE JUROR: (Prospective  
4 juror nods.)

5 MR. DURANT: Excuse me, Judge.  
6 What's your name?

7 PROSPECTIVE JUROR: Yolanda  
8 Griswold.

9 THE COURT: Yes, ma'am?

10 PROSPECTIVE JUROR: My name is  
11 Cassie Jackson, and I know Ms. Davis.

12 THE COURT: And you know her? I'm  
13 sorry.

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: And how do you know her?  
16 Do you go to church or just know her in the  
17 community or organization --

18 PROSPECTIVE JUROR: We lived in the  
19 same community at one time and went to the same  
20 church.

21 THE COURT: And how long ago was  
22 that?

23 PROSPECTIVE JUROR: Um --

24 THE COURT: Just approximately.

25 PROSPECTIVE JUROR: I guess five

8

1 years maybe.

2 THE COURT: Okay. But you don't  
3 still go to the same church or live --

4 PROSPECTIVE JUROR: I'm still in the  
5 same church --

6 THE COURT: And is it her husband's?

7 PROSPECTIVE JUROR: No. It's at our  
8 home church.

9 THE COURT: Okay. And let me ask  
10 both of you, by having some contact or knowing who  
11 she is, would that have any impact whatsoever with  
12 your sitting on this jury?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Okay. Anyone else?

15 (No response.)

16 THE COURT: And, again, down at this  
17 end is David Watkins and his attorney,  
18 Winston Durant?

19 (No response.)

20 THE COURT: I'm going to read out  
21 some witnesses. I'm first going to start maybe  
22 with the Montgomery Police Department. And if you  
23 aren't sure, maybe the attorneys can help us out.  
24 But I think all of these witnesses are with the  
25 Montgomery Police Department. Detective



9

1       Geno Howton, Detective A. Loria, Detective R. H.  
2       Green, and Detective W. R. Huett?

3                       (No response.)

4                       THE COURT: And with the Department  
5       of Forensic Science is Joe Saloom --

6               Is Jim Sparrow with Forensics?

7                       MR. KIDD: Yes, ma'am.

8                       THE COURT: Jim Sparrow and  
9       James Lauridson?

10                      (No response.)

11                     THE COURT: And also as a witness,  
12       is George McCree in the courtroom?

13                      (No response.)

14                     THE COURT: And Roger Fletcher?

15                      (No response.)

16                     THE COURT: Have I looked over any  
17       witnesses -- any other witnesses?

18                      (No response.)

19                     THE COURT: Has anyone here -- and  
20       if you have, we just need you to stand and identify  
21       yourself -- but has anyone here heard anything  
22       about this matter or -- at all?

23                      (No response.)

24                     THE COURT: Okay. And you don't  
25       know anything about the facts of the case?

10

1 (No response.)

2 THE COURT: At any time, if you had  
3 rather not answer a question in front of the rest  
4 of the panel, remember that we can talk to you in  
5 private. And sometimes the attorneys need to  
6 follow up something on your questionnaire and talk  
7 to you in private.

8 Has anyone here or anyone in your immediate  
9 family ever worked for the Montgomery Police  
10 Department or any law enforcement agency, the  
11 Sheriff's Department, Federal Government? If so,  
12 we need to know who it was, when they worked  
13 there -- and I see some hands on the back row --  
14 but anybody on the front row? Let's do it by --  
15 we'll start with the postal people.

16 PROSPECTIVE JUROR: My name is  
17 Mary Donald, and my step-son, Phillip D. Taylor,  
18 just resigned from the Montgomery Police Department  
19 and is now going through Trooper Academy.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR: I'm Kim Dowe  
22 and my brother-in-law is a Deputy District Attorney  
23 for the State of Alabama.

24 PROSPECTIVE JUROR: My name is  
25 Gene Draper, and my sister-in-law is records clerk

11

1 down at the Montgomery Police Department.

2 THE COURT: Let me ask, do y'all --  
3 do y'all know each other --

4 (Prospective jurors nod.)

5 THE COURT: -- before today? Okay.  
6 What about the next row? I see someone on the back  
7 row.

8 THE COURT REPORTER: There's a hand  
9 on the second row, Judge.

10 THE COURT: Okay. If you would  
11 stand and --

12 PROSPECTIVE JUROR: Yolanda  
13 Griswold. My brother is a former police officer  
14 and that's been like maybe ten years ago.

15 THE COURT: Okay. And the back  
16 rows?

17 PROSPECTIVE JUROR: George  
18 Jackson Jr. My daughter is with the Sheriff's  
19 Department.

20 PROSPECTIVE JUROR: Karen Jakemal  
21 My husband was a state trooper.

22 THE COURT: Okay. Let me ask, if  
23 anyone here would automatically give a police  
24 officer's testimony any more weight than you would  
25 any other witness simply because of their position?

12

1 (No response.)

2 THE COURT: As I said, Mr. Watkins  
3 is charged with murder. And has anyone in your  
4 family ever been a victim of such an offense of  
5 murder or manslaughter? And, again, if you had  
6 rather not answer it, you can talk to us in  
7 private. But if you want to answer it, we need to  
8 know when it was, who it was, if it went to trial,  
9 that type thing. Does anyone want to answer it now  
10 or have anyone in your family?

11 (No response.)

12 THE COURT: Does anyone here have a  
13 fixed opinion as to the guilt or the innocence of  
14 the defendant which would bias your verdict?

15 (No response.)

16 THE COURT: And has anyone here made  
17 any promises or assurance that he or she will  
18 convict or acquit?

19 (No response.)

20 THE COURT: Sometimes for religious  
21 reasons, moral reasons or just personal reasons,  
22 someone thinks or feels like they cannot sit in  
23 judgment on their fellow man. Does anyone feel  
24 that they could not sit on this case because of  
25 such beliefs?

13

1 (No response.)

2 THE COURT: And there's probably  
3 going to be a number of visual aids during the  
4 course of this trial. And if you do have any  
5 difficulty -- and I don't think there's going to be  
6 with where they'll be placed -- but if you do have  
7 any difficulty seeing or hearing and you're  
8 selected for the jury, just let us know, and we'll  
9 be sure to put you somewhere where you won't have a  
10 problem.

11 Does the State have additional questions?

12 MR. KIDD: Judge, I do have a few.

13 Good morning, ladies and gentlemen. As the  
14 Judge told you earlier, my name is Michael Kidd,  
15 and I am a full-time prosecutor with the State of  
16 Alabama with Montgomery County. This is  
17 Mr. Will Powell. He's also a full-time prosecu~~tor~~  
18 with our office. And he and I will be trying the  
19 case together.

20 This is my opportunity to get a little bit  
21 information about you guys. You've already  
22 provided some information about yourselves, but  
23 I'll kind of do the same thing you had to do.  
24 My wife is Christy, and she lives here in  
25 Montgomery. And I'm originally from Randolph

14

1 County, and I don't have any children as of yet.

2 What I'm going to be doing is asking you just  
3 a few questions. My questions are certainly not  
4 designed to embarrass anyone or make anybody feel  
5 uncomfortable. It's just really the only way that  
6 we have to get to know you. And what I'm going to  
7 ask you to do, if you would for me, because I'm not  
8 very good with names sometimes, and also so our  
9 court reporter here, Ms. Newman, can make sure we  
10 have an accurate record here of what we're trying  
11 to do. If you respond to one of my questions, if  
12 you'll stand up for me first, and then if you'll  
13 tell me who you are -- even if it is repetitive,  
14 that way we've got a good record of who is  
15 responding to my questions.

16 If I ask any question that you just feel  
17 uncomfortable responding to in front of the entire  
18 venire, I'm sure the Judge will allow you to come  
19 forward and we can discuss it at the bench, if you  
20 prefer to do it that way.

21 Is anyone familiar with Mr. Winston Durant?  
22 Mr. Durant is an attorney here in Montgomery and  
23 he's been practicing for a long time, does a lot of  
24 things in the legal community. Is anyone familiar  
25 with Mr. Durant?

15

1 (No response.)

2 THE COURT: I didn't ask about them.  
3 I'm sorry. I must have overlooked it.

4 MR. KIDD: That's okay.

5 THE COURT: Also the defendant.

6 MR. KIDD: The defendant here is  
7 Mr. David Watkins. Is anyone familiar with  
8 David Watkins or know a member of Mr. Watkins'  
9 family?

10 (No response.)

11 MR. KIDD: I see no response to that  
12 question.

13 The State anticipates calling a number of  
14 witnesses this morning. Some of the people that I  
15 may identify for you may not testify. But if  
16 certain things happen in the trial, the State may  
17 call them as witnesses. Is anyone familiar with an  
18 individual by the name of Robert Watkins?

19 (No response.)

20 MR. KIDD: A young female by the  
21 name of Latoya Davis?

22 (No response.)

23 MR. KIDD: I see no response to that  
24 question. How about a young female by the name of  
25 Felisha Jones? She goes by the nickname of

16

1 Fee Fee.

2 (No response.)

3 MR. KIDD: I see no response to that  
4 question. How about Christopher Wysatt?

5 (No response.)

6 MR. KIDD: I see no response to that  
7 question. Ronnie Scott?

8 (No response.)

9 MR. KIDD: How about Detective Keith  
10 Barnett with the Montgomery Police Department?  
11 Does anyone know Detective Keith Barnett?

12 (No response.)

13 MR. KIDD: How about Detective  
14 Guy Naquin?

15 (No response.)

16 MR. KIDD: Okay. Now, the Judge is  
17 going to tell you -- and I'll tell you from the  
18 beginning right now -- this case involves a murder.  
19 And during the course of the trial there will be  
20 pieces of evidence that will be offered. There  
21 will be some photographs that are offered. Some  
22 of the photographs may be graphic and may depict  
23 extreme violence. Due to the nature of the case  
24 being a murder case and some of the evidence that  
25 may be coming in, does anyone feel uncomfortable



17

1 sitting as a juror or just would say because of  
2 what this involves, I just don't want to  
3 participate?

4 (No response.)

5 MR. KIDD: I see no response to that  
6 question. Does any member of the jury venire have  
7 any type of religious or moral beliefs that would  
8 make it where you would be uncomfortable as sitting  
9 as a juror?

10 (No response.)

11 MR. KIDD: I see no response. Are  
12 there any members of the jury venire that are  
13 members of some type of organization such as the  
14 NRA or ACLU?

15 (No response.)

16 MR. KIDD: I see no response. Now,  
17 with all the television shows and the drama that  
18 depicts court activities, I'm sure a lot of you  
19 know what the burden of proof is in a criminal  
20 case. The Judge will instruct you that the bur~~en~~  
21 of proof in a criminal case is the State has to  
22 prove a case beyond a reasonable doubt. Is the~~s~~  
23 anyone here that just is not really for sure wha~~t~~  
24 that means?

25 (No response.)

18

1 MR. KIDD: I see no response. Does  
2 anyone believe that in a criminal case that the  
3 State should be required to remove all doubt from  
4 your mind before you would be willing to convict  
5 someone?

6 (No response.)

7 MR. KIDD: I see no response to that  
8 question. Does anybody feel that in a murder case  
9 that the burden of proof that's on the State should  
10 be greater than, say, a shoplifting case? Does  
11 anyone feel that way, because this is a murder that  
12 the State should be held to a little bit higher  
13 standard?

14 (No response.)

15 MR. KIDD: I see no response. Have  
16 any member of the jury venire ever had a bad  
17 experience with any member of the Montgomery Police  
18 Department? And before you answer, I want you to  
19 think about that. And what I'm asking, it could be  
20 something very trivial. It could be something to  
21 the effect that you got a speeding ticket that  
22 maybe you didn't feel that you deserved. Or  
23 perhaps you were a victim of a burglary and the  
24 detectives came out and didn't do an adequate job  
25 investigating the crime. I had that happen to

19

1 myself. Anything along that nature with any member  
2 of the Montgomery Police Department?

3 (No response.)

4 MR. KIDD: I see no response. How  
5 many people, just by the show of hands, believe  
6 that street gangs are a problem here in Montgomery?

7 (Jurors raise their hands.)

8 MR. KIDD: Does anybody feel that  
9 street gangs are not a problem?

10 (No response.)

11 MR. KIDD: I see no response. Does  
12 anyone in the jury venire know someone that is a  
13 member of a street gang or an organization?

14 (No response.)

15 MR. KIDD: I see no response to that  
16 question.

17 PROSPECTIVE JUROR: Wait. Rephrase  
18 that again.

19 THE COURT: I don't think he means  
20 just any organization.

21 MR. KIDD: I'm not talking -- I'm  
22 talking about a street gang or a street  
23 organization.

24 PROSPECTIVE JUROR: Do I know  
25 anyone --

1 MR. KIDD: Do you know anyone that  
2 would be a member of a street gang or street  
3 organization?

4 PROSPECTIVE JUROR: I've had  
5 encounters with some street gangs.

6 MR. KIDD: Okay.

7 PROSPECTIVE JUROR: But not  
8 personally know them.

9 MR. KIDD: Okay. Sir, what was your  
10 name? I'm sorry.

11 PROSPECTIVE JUROR: Gary Holt.

12 MR. KIDD: Mr. Holt, because of your  
13 encounter with an individual such as that, could  
14 you be fair and impartial in the case if there was  
15 some evidence that there was some gang activity  
16 going on in this case?

17 PROSPECTIVE JUROR: Sure. No  
18 problem.

19 MR. KIDD: You could remain mutual?

20 PROSPECTIVE JUROR: (Prospective  
21 juror nods.)

22 MR. KIDD: Thank you very much.  
23 Anyone else other than Mr. Holt?

24 (No response.)

25 MR. KIDD: Are there any members of

21

1 the jury venire that are familiar with the area  
2 with where this crime allegedly took place? I'll  
3 tell you that this area is right off Day Street.  
4 It's a street by Keystone Street. Knox Street  
5 intersects it. And it's just right off of Day  
6 Street over by the Airport Base. Is anyone  
7 familiar -- I believe they actually call this  
8 community a beer (sic) match.

9 PROSPECTIVE JUROR: Bear match,  
10 isn't it?

11 MR. KIDD: Bear match, I'm sorry.  
12 I'm from out-of-town. Yes, sir, are you familiar  
13 with this area?

14 PROSPECTIVE JUROR: When I was in  
15 the service at Maxwell.

16 MR. KIDD: Right across from the  
17 base?

18 PROSPECTIVE JUROR: I knew where it  
19 was at.

20 MR. KIDD: Okay.

21 PROSPECTIVE JUROR: Also --

22 MR. KIDD: Your name is  
23 Mr. Dickerson, thank you.

24 PROSPECTIVE JUROR: Jackson. I used  
25 to drive a truck, and I delivered in that area.

22

1 MR. KIDD: Okay. Are you familiar  
2 with the area of Keystone Street -- do you know  
3 that street by name?

4 PROSPECTIVE JUROR: I know where  
5 it's at.

6 MR. KIDD: Okay. Thank you. This  
7 case may involve evidence that there were other  
8 participants and that there was some  
9 co-conspirators or co-defendants involved. Does  
10 any member of the jury venire believe that if the  
11 evidence were that the defendant was a  
12 co-conspirator, he should not be held to the same  
13 burden of proof to, say, someone who was actually a  
14 principal? Now, let me rephrase --

15 THE COURT: Let me say this. The  
16 Court is going to instruct you on the law if the  
17 evidence supports such an instruction on that type  
18 of law and what you should consider. Would there  
19 be anyone here who could not follow the law as far  
20 as a co-defendant or -- aiding and abetting, that  
21 type thing?

22 (No response.)

23 THE COURT: Okay. Go ahead.

24 MR. KIDD: Thank you, Judge. Can  
25 each juror just promise to listen to the evidence

23

1 as it comes to you from the witness stand, to  
2 listen to the judge's instruction, and follow the  
3 Judge's instructions and apply the law as it  
4 applies to the evidence and render a verdict  
5 accordingly? Can everybody promise me to do that?  
6 (Prospective jurors nod.)

7 MR. KIDD: Thank you very much. I  
8 don't have any further questions.

9 THE COURT: Mr. Durant, do you have  
10 any additional questions?

11 MR. DURANT: One.

12 My name is Winston Durant, and I represent  
13 Mr. David Watkins, the defendant, in this case.  
14 I -- you have heard, and I assume that all of you,  
15 from time to time, looked at television shows  
16 depicting courtroom scenes and prosecutors and  
17 defense lawyers. And I'm sure that you've heard  
18 about the presumption of innocence. And the Judge  
19 is going to instruct you at the end of this case  
20 that the presumption of innocence is evidence. Can  
21 all of you promise me, in spite of what kind of  
22 scenes you might see depicted in this case, what  
23 kind of evidence that might come up that might  
24 indicate an influence, can you promise me that you  
25 will adhere to the principle of presumption of

24

1 innocence until the State meets its burden beyond a  
2 reasonable doubt? Can you promise me that you will  
3 stick to the presumption of innocence? Everyone  
4 who comes into the courtroom is presumed to be  
5 innocent. Can you do that?

6 (Prospective jurors nod.)

7 THE COURT: Okay. One thing I might  
8 add. We should conclude the case by tomorrow  
9 sometime. It may be tomorrow afternoon. But does  
10 anyone have a problem? I don't see that anyone had  
11 been excused?

12 (No response.)

13 THE COURT: We're going to try to  
14 let you know before noon who is selected for this  
15 jury. I'm going to excuse you now to go back to  
16 the jury assembly room. If there's anyone who  
17 needs to stay in here and tell us something in  
18 private, I would ask you to remain. The rest of  
19 you can go back, and we'll certainly let you know  
20 where we are by noon.

21 (Out of presence of the jury.)

22 (In the presence of Mr. Day.)

23 THE COURT: Mr. Day, you indicated  
24 you needed to tell us something in private.

25 PROSPECTIVE JUROR: Well, the only



25

1 thing I wanted to say, he asked a question if you  
2 had a family member that's been --

3 THE COURT: Yes.

4 PROSPECTIVE JUROR: My sister's  
5 ex-husband has been convicted of murder in the  
6 past. And I don't know whether that would have any  
7 bearing, but --

8 THE COURT: When was that?

9 PROSPECTIVE JUROR: Oh, let's see --  
10 it's been, I guess, four or five years ago when he  
11 was convicted.

12 THE COURT: Was it here in  
13 Montgomery County?

14 PROSPECTIVE JUROR: No, ma'am. It  
15 was over in Slapout.

16 THE COURT: Okay. Would that be  
17 something you would hold against the State in this  
18 case --

19 PROSPECTIVE JUROR: (Prospective  
20 juror nods.)

21 THE COURT: Would you be able to  
22 treat each side fairly --

23 PROSPECTIVE JUROR: I think I can.

24 THE COURT: Were you -- did you go  
25 to the trial?

26

1 PROSPECTIVE JUROR: No, ma'am, I did  
2 not. And, like I say, she had been divorced from  
3 the guy several years before this incident  
4 occurred. And I just wanted to let y'all know  
5 that.

6 THE COURT: Well, we appreciate  
7 that.

8 Do y'all have any follow-up questions?

9 MR. KIDD: I don't, Your Honor.

10 THE COURT: Thank you, sir.

11 PROSPECTIVE JUROR: Thank you.

12 (Out of the presence of Mr. Day.)

13 THE COURT: Do y'all have any  
14 motions with regard to anyone? It looks like we  
15 have twenty-eight, and we'll just get two  
16 alternates. So do y'all need about five minutes or  
17 are y'all ready to start?

18 MR. KIDD: Judge, if you'll let me  
19 get my chart organized --

20 THE COURT: I don't think we're  
21 going to be able -- I mean, we haven't even struck  
22 the jury. You aren't going to be able to do that.  
23 When you say your chart --

24 MR. KIDD: Just so I can keep track  
25 of who I'm striking.

27

1 THE COURT: Oh, okay. I'll give you  
2 a couple minutes.

3 (Brief recess taken. )

4 (Striking of the jurors.)

5 THE CLERK: No. 117, 124, 125, 135,  
6 156, 161, 169, 170, 174, 181, 183, 185, 186, and  
7 208.

8 MR. KIDD: I've got 125 and 170 as  
9 alternates.

10 THE CLERK: Right.

11 THE COURT: Okay. Why don't we go  
12 get the jurors, and we'll swear them in and I can  
13 give my little bit and then --

14 (In the presence of the jury.)

15 THE COURT: If you'll go to one of  
16 the end of the rows and remain standing.

17 (Jurors sworn.)

18 THE COURT: Okay. You can be  
19 seated. I'm just going to keep you here a moment,  
20 and then we'll take a break for lunch.

21 There's one chair -- I don't think for this  
22 length of time, it's going to be --

23 THE CLERK: There's enough chairs,  
24 Judge.

25 THE COURT: I know, but for this

1 period of time, I think everybody can just be  
2 seated. There's one --

3 THE CLERK: Jane told them the chair  
4 was not strong.

5 THE COURT: Okay. Before we break  
6 for lunch, I'm going to briefly explain to you the  
7 procedures that we'll be following and the duties  
8 of the Court and the duties of the jury.

9 Now, first of all, as trial Judge, it's my  
10 duty to ensure the orderly conduct of the trial,  
11 rule on questions of law as they may arise from  
12 time to time, and at the end of the case instruct  
13 you on the law that applies.

14 Now, you as the jury, you're the sole and  
15 exclusive judges of the evidence. It's your duty  
16 to listen to the evidence and from it determine the  
17 true facts and then apply the law as given to you  
18 by the Court to the facts as you find them to  
19 arrive at your verdict.

20 Now, the procedure that we'll be following is  
21 first of all, counsel for the State will make an  
22 opening statement, and then counsel for defendant  
23 will respond. Now, these statements, they're  
24 simply given to familiarize you with the case.  
25 They're not evidence. They're, again, just to tell

1 you what the case is about. Following opening  
2 statements, then evidence will be presented by  
3 witnesses from the witness stand, and there will  
4 probably also be quite a bit of documentary  
5 evidence in this case.

6 During the course of the trial, the attorneys  
7 will object from time to time. That's their job.  
8 And it's up to the Court to rule on those  
9 objections. But you should not concern yourself  
10 with any of the reasons for my rulings, as they're  
11 controlled and required by law. You're also not to  
12 speculate as to any possible answers to questions,  
13 which are not required to be answered.

14 Finally, the overruling of an objection is not  
15 intended to indicate the weight to be given such  
16 evidence. Following the close of the evidence,  
17 then the attorneys will address you again and make  
18 closing arguments. And at that time, they'll  
19 discuss the evidence that's been presented and all  
20 reasonable inferences to help guide you to your  
21 verdict.

22 Now, we'll be taking a break -- and we're  
23 going to in just a moment -- but during the course  
24 of the trial, if you do need to take a break, just  
25 raise your hand, I'll try to be watching and we can

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1 do so. Sometimes it depends on where we are with a  
2 witness whether we take a break.

3 I do want to caution you, at this time, not to  
4 discuss the case with anyone. That includes a  
5 fellow juror. In fact, you're not even to consider  
6 the matter until you've heard all of the evidence.  
7 And, in addition, if you're in the hall or taking a  
8 break, and someone inadvertently, a spectator or a  
9 witness, says something in front of you, you just  
10 need to let the Court know.

11 Finally, I want to caution you not to --  
12 you're not to make any type of investigation on  
13 your own, such as go to the scene or consult legal  
14 periodicals. In other words, your verdict must  
15 strictly be based on the evidence presented in this  
16 courtroom and the law that applies. I'm going to  
17 give you an hour and a half -- excuse me -- an hour  
18 and a half today, and we'll get you at 1:30 in the  
19 jury assembly room. And we'll see you then.  
20 You're excused now for lunch.

21 (Out of presence of the jury.)

22 THE COURT: I don't think there are  
23 any matters --

24 MR. KIDD: Judge, just a couple.

25 Judge, the only thing I would like to ask the Court

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1 about. This case primarily is going to be a  
2 statement case. The State's contention is that  
3 David Watkins' statement convicts him of the  
4 offense. There is a video interview with  
5 Sergeant Loria where Mr. Watkins gives a videotaped  
6 statement. There's portions of that video  
7 statement where he has his head down and he's  
8 talking in a very low voice. It's audible, but you  
9 have to really strain sometimes to hear it. What I  
10 would like to do is to be able to offer the jurors  
11 the transcription --

12 THE COURT: Well, I'm going to have  
13 to look at that and make a decision. So get out  
14 the tape.

15 MR. KIDD: The tape or the  
16 transcription?

17 THE COURT: Well, I need both. I  
18 have to review it.

19 MR. KIDD: It's a videotape, Judge.

20 THE COURT: Well, I'll have to  
21 review it. I've got to review it before I make a  
22 decision.

23 MR. KIDD: Okay.

24 THE COURT: How long is that going  
25 to take?

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1 MR. KIDD: The tape is about  
2 twenty-five minutes.

3 THE COURT: Well, if it's just one  
4 portion of it --

5 MR. KIDD: Well, Judge --

6 THE COURT: Y'all be back at one and  
7 have that portion that you say is inaudible --

8 MR. KIDD: Well, Judge, it's the  
9 whole thing. I mean, it's.

10 MR. POWELL: Basically --

11 THE COURT: Well, you cannot do that  
12 until I review it. So get it out. Now, he's got  
13 to go to lunch. Would it be better to take him now  
14 and have him back at one or wait until we get  
15 through with the tape?

16 THE BAILIFF: It doesn't matter to  
17 me. Whatever you want to do.

18 THE COURT: It doesn't --

19 THE BAILIFF: I mean, he needs to go  
20 eat.

21 THE COURT: This is something I  
22 could have done last week is look at that and go  
23 over it and see whether a transcript is going to be  
24 provided to a jury.

25 MR. KIDD: Judge, I apologize. I



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1 didn't realize it was going --

2 THE COURT: I think by law I'm  
3 required to do that. So, let's get started. And  
4 if he doesn't get back from lunch, of course,  
5 that's going to cause a problem with the jurors  
6 being delayed.

7 THE BAILIFF: Let me just let the  
8 jail know --

9 THE COURT: Why don't you -- yeah.

10 MR. KIDD: Judge, we'll just forget  
11 the transcript. That's fine.

12 THE COURT: I don't mind reviewing  
13 it.

14 MR. KIDD: You know, it's going to  
15 take probably at least -- the transcript is about  
16 twenty-five pages.

17 MR. POWELL: Twelve --

18 MR. KIDD: Twelve, I'm sorry.

19 THE COURT: And I know during a  
20 video, there are probably pauses and so forth.

21 MR. POWELL: It's pretty consistent.

22 THE COURT: Well, we either need to  
23 get started with it or not. He needs to let them  
24 know --

25 MR. KIDD: Judge, we need to get a

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1 VCR for you to look -- do you have one or do I need  
2 to --

3 THE COURT: No --

4 MR. POWELL: It would be better,  
5 Your Honor, if we started at one.

6 THE COURT: Okay. We'll start back  
7 at one.

8 MR. KIDD: We'll have it ready to  
9 go.

10 THE COURT: Okay.

11 MR. KIDD: Judge, in the meantime,  
12 would you like to take a copy of the transcript --

13 THE COURT: It's not going to help  
14 me until I -- I would like one to have as I go  
15 along.

16 (Lunch break was taken.)

17 THE COURT: During the course of the  
18 lunch break, I had an opportunity to review the  
19 taped statement as well as I was provided a copy of  
20 the transcript. And I know, Mr. Durant, you had an  
21 opportunity to also look at the video as well as  
22 the transcript. Do you have any motions?

23 Well, let me say, I think that almost all of  
24 the transcript is correct. However, it does  
25 concern me that there are a few incidents where it

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1 appeared to me to be inaudible and there was a  
2 transcript of a -- part of his statement, and I  
3 certainly think the tape would be admissible, but  
4 I'm not inclined to let the jury have a copy of the  
5 transcript while hearing it or looking at it.

6 MR. DURANT: Judge, if I may, I  
7 would just make a -- I'll just make a motion to  
8 keep the video out, because I think there's a  
9 problem with continuity. I think there are many  
10 incidents where it's inaudible and the detective,  
11 is, in general, supplying the answer. And I don't  
12 think it's necessarily in response of the  
13 defendant. I think it's -- I think that his  
14 testimony is somewhat distorted by the problem of  
15 not having the proper audio and also the gaps in  
16 the tape.

17 THE COURT: Do you have anything you  
18 want to say for the Record, Mr. Kidd?

19 MR. KIDD: No, ma'am, Your Honor, I  
20 don't.

21 THE COURT: Well, again, I do  
22 think -- there's only a few incidents and a few  
23 words that are really, in my opinion, not audible,  
24 although it -- certainly at times the defendant is  
25 not speaking as loudly as he -- or clearly as other

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1 portions. But I'm going to let them -- I'm going  
2 to let the jury view it. But, as I say, again, not  
3 have a copy of the transcript.

4 Is there anything else we need to take up?

5 MR. KIDD: Judge, I've got some  
6 requested jury charges, but we can do that later on  
7 this afternoon.

8 THE COURT: Okay. Are the jurors  
9 here?

10 MS. HARRELL: They're all here.

11 THE COURT: Okay. Then we can get  
12 started.

13 Let me say to everyone in the courtroom.  
14 You're welcome to be here. You cannot get up and  
15 leave at random. You can only take breaks and  
16 leave the courtroom at a break. And there will be  
17 no talking in the courtroom. Anyone here, a  
18 spectator, needs to go either to the second floor  
19 or the fourth floor to use restrooms, so there will  
20 be no inadvertent contact with the jurors. Okay.

21 If there are any witnesses in the courtroom,  
22 you need to leave. I don't know who is a witness  
23 and who isn't.

24 (In the presence of the jury.)

25 THE COURT: Okay. At this time, are

1 you ready for your opening?

2 MR. KIDD: Good afternoon, ladies  
3 and gentlemen. As I said earlier this morning --  
4 I'm going to try not to trip over this cord -- my  
5 name is Michael Kidd. I'm a full-time prosecutor  
6 with the State of Alabama. This case involves the  
7 defendant in this case, Mr. David Watkins, who is  
8 seated here at counsel table with his attorney.

9 Ladies and gentlemen, seated at counsel table  
10 with us is Ms. Mae Davis. Ms. Davis is the mother  
11 of Jonathan Farrell. Jonathan Farrell was killed  
12 on October the 19th, 1999.

13 This was Jonathan Farrell before he met  
14 David Watkins. He met David Watkins on the night  
15 of October 19th of 1999. And after he met  
16 David Watkins, this was what was left.

17 David Watkins has been charged in this case  
18 with intentional murder. In Alabama, intentional  
19 murder, someone is -- commits the crime of  
20 intentional murder when he acts with the intent to  
21 cause the death to another person and his actions  
22 actually do cause the death of another person.

23 Now, what must the State prove in order to  
24 prove its case beyond a reasonable doubt in this  
25 case? The State must prove that David Watkins

1 acted with the intent to kill Jonathan Farrell.  
2 That he did, in fact, act with that specific  
3 intent. And that Jonathan Farrell is dead as a  
4 result.

5 What does the State not have to prove in this  
6 case? The State does not have to prove to you that  
7 the defendant, David Watkins, was the actual  
8 shooter or was the actual individual that pulled  
9 the trigger. The State does not have to prove that  
10 to you.

11 What evidence is there that David Watkins  
12 killed Jonathan Farrell? This trial will basically  
13 be a two-part trial. The first part of the trial  
14 will actually consist of a tape confession where  
15 David Watkins confesses to his involvement in this  
16 crime. You will actually see him on video. I'll  
17 tell you that the video is not good. The volume on  
18 the video, David Watkins throughout the entire  
19 interview has his head down, he mumbles,  
20 Sergeant -- Tony Loria, who you will meet later on  
21 in the afternoon, conducted the video. He  
22 repeatedly attempted to get Mr. Watkins to speak  
23 up. I'm going to ask you to listen carefully.  
24 There are certain portions of the statement that  
25 are unmistakeable. And portions of that statement

1 indicate that David Watkins is guilty in the way  
2 that the State is charging.

3 The second part of the trial will be the  
4 physical evidence. There will be several pieces of  
5 physical evidence that come to you. The  
6 interesting thing about physical evidence is  
7 physical evidence only tells one story. It cannot  
8 lie. And the physical evidence will show you that  
9 David Watkins did participate in the manner in  
10 which he said. But it will also show you that  
11 there were things that David Watkins omitted, and  
12 that his culpability is even worse than what he  
13 says in his own statement.

14 This trial is about three individuals --  
15 actually four. We start with David Watkins, who is  
16 the defendant in this case. With David Watkins is  
17 his first cousin, Robert Watkins. They lived on  
18 Keystone Street here in Montgomery County. With  
19 them on the night of October the 19th of 1999 was a  
20 female, Latoya Davis. Latoya Davis' sister dated  
21 Robert Watkins. There's a relationship between all  
22 three of these individuals. Robert and  
23 David Watkins are first cousins. Latoya Davis is  
24 friends with David Watkins, and she has relations  
25 with Robert Watkins in that her sister dates

1 Robert Watkins. Those are the three individuals  
2 involved in this crime.

3 The victim in the crime is Jonathan Farrell.  
4 That's Mr. Farrell on his knees in a ditch with a  
5 bullet hole through his head. These three  
6 individuals cruelly beat, tortured, and executed  
7 Jonathan Farrell in the early morning hours of  
8 October the 20th, late evening, October the 19th.

9 What does David Watkins say in his statement?  
10 As you watch this video, you'll see David Watkins  
11 talk about exactly what happened. His rendition of  
12 the facts is that he was over at Robert Watkins'  
13 house with Latoya Davis and that the individual  
14 known as Jonathan Farrell, this lady's son, comes  
15 over to visit, and he brings a case of beer, a  
16 friend drops him off. He walks in and has some  
17 conversation with Robert Watkins. He is familiar  
18 with Robert. He knew him from a past encounter. I  
19 believe the evidence may be he actually worked, at  
20 one time, with Robert Watkins. He was friends with  
21 Robert. And as he came over, he shared his beer  
22 with them. He sat down. He wanted to talk to  
23 them, just kind of hang out. They started playing  
24 cards. And during the course of the card playing,  
25 something terribly went wrong, according to



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1 David Watkins. David says that Jonathan Farrell  
2 misplayed a couple of hands of cards and that  
3 Latoya Davis, the fifteen-year-old female that was  
4 there, was upset because he kept misplaying his  
5 cards. And then a fight broke out.

6 Now, in his statement, David Watkins is not  
7 really specific about who was involved in that  
8 initial altercation. But, in fact, there was some  
9 type of fight there, and that the fight progressed,  
10 that it moved from the inside of the house outside  
11 in the yard. Now, David Watkins says while he was  
12 outside in the yard that Latoya Davis took a  
13 two-by-four timber and cracked it across the back  
14 of Jonathan Farrell's head causing a laceration  
15 about two or three inches across the back of his  
16 skull. That he actually hit or kicked  
17 Jonathan Farrell as he laid on the ground. He  
18 watched Latoya Davis as she did the same. And then  
19 when Jonathan Farrell was floundering on the  
20 ground, unable to get up, this gentleman right here  
21 says that he walked over to him, he unzipped his  
22 fly, and he pulled out his penis, and he urinated  
23 in this man's face while that man laid helplessly  
24 on the ground unable to do anything. That's what  
25 David Watkins says he did.

1 In addition to that, if that's not bad enough,  
2 David Watkins tells a story of how  
3 Jonathan Farrell, after he urinated in his face,  
4 was able to get to his feet, how he was disoriented  
5 because he had been hit over his head with this  
6 two-by-four, and how he staggered and stumbled some  
7 two-hundred yards away from the initial crime scene  
8 to an area at the end of Keystone Street, where  
9 there's a culvert and water that runs through the  
10 culvert. David Watkins says all three: He,  
11 Latoya Davis, and Robert Watkins followed this --  
12 Mr. Farrell down to the end of Keystone Street.  
13 And that some point in time, they came back to the  
14 house, they talked about what would happen, and  
15 what had transpired, and Robert Watkins produced a  
16 gun and said, you know, he knows where I live. He  
17 knows all of us. He can tell on us. We've got to  
18 kill him. That's what we've got to do.

19 David Watkins says he had conversations with  
20 Robert Watkins about who was actually going to  
21 shoot him. At some point in time, David Watkins  
22 says, in his own words, that he encouraged  
23 Robert Watkins to take the life of  
24 Jonathan Farrell. That's what he says, not the  
25 State. It comes from his mouth. After they had

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1 this conversation, they couldn't decide who was  
2 going to kill Jonathan Farrell. David Watkins  
3 tells you that Latoya Davis said I'll do it. She  
4 grabbed the gun. She walked over, and she kicked  
5 Jonathan Farrell into the ditch. And as  
6 Jonathan Farrell sat on his knees and begged and  
7 pleaded for his life, according to David Watkins,  
8 she fired two shots. The second one,  
9 Jonathan Farrell never spoke again. That's what  
10 David Watkins says.

11 But, ladies and gentlemen, in addition to his  
12 statement, there's physical evidence too. But  
13 David Watkins says in his confession that he  
14 conspired to kill Jonathan Farrell. That  
15 conspiracy was when he was talking to Latoya Davis  
16 and he was talking to Robert Watkins about somebody  
17 has got to kill him. He encouraged Robert Watkins  
18 to pull that trigger. He testifies, in his  
19 statement, that he actually participated in this  
20 act. He tells you how he beat Jonathan Farrell,  
21 kicking him in the side, how he urinated on  
22 Jonathan Farrell, while he laid helplessly on the  
23 ground. And then finally how he encouraged his  
24 cousin, Robert Watkins, to take his life.

25 What does the physical evidence tell us in

1 addition to this? The physical evidence, ladies  
2 and gentlemen, is going to tell you that there were  
3 two separate gunshots. David Watkins says, in his  
4 statement, that these gunshots came almost in  
5 succession. That after the first gunshot, he heard  
6 Jonathan Farrell cry out for his life for the last  
7 time. And then shortly thereafter, there was a  
8 second gunshot.

9 Ladies and gentlemen, the physical evidence is  
10 going to tell you that there's two separate  
11 gunshots. The first or one of the gunshots came --  
12 embraced the side of the cheek, but the -- excuse  
13 me -- the fatal gunshot was an actual contact  
14 wound. Whoever pulled that trigger, took the end  
15 of that gun and stuck it to Jonathan Farrell's head  
16 while he was sitting on his knees begging for his  
17 life and pulled the trigger. They shot him from  
18 the back. The projectile went through his head and  
19 lodged in the front. You have two different  
20 directions that those gunshots came from. And I  
21 submit to you, there is no way possible that the  
22 way that David Watkins describes that shooting in  
23 his statement could have occurred the way that the  
24 physical evidence tells us that it happened.

25 The physical evidence also will tell us -- and

45

1 you'll actually see a crime scene video, and you'll  
2 see what we're talking about -- there is no way  
3 possible that you could have seen what happened in  
4 that ditch unless you were right there next to him.  
5 Your visibility is blocked from just about all  
6 angles. And the only way -- this was night. It  
7 was almost midnight -- the only way you could have  
8 seen it was to be right there with whoever it was  
9 committing the deed.

10 And, finally, the physical evidence will show  
11 you that Jonathan Farrell did die on his knees just  
12 as David Watkins said. Ladies and gentlemen,  
13 Jonathan Farrell was executed. Why? Why did this  
14 man have to die? Why could this individual act so  
15 callously? He says it's because this man misplayed  
16 a hand of cards. That's the explanation that he  
17 gives you.

18 What is your role as a juror in this case?  
19 What are you supposed to do? The first thing  
20 you're supposed to do is listen to the evidence.  
21 Don't take my word for it. Don't take Mr. Durant's  
22 word for it. Listen to it. It comes right here  
23 from the witness stand. You'll see the video.  
24 You'll see this gentleman speaking on the video.  
25 Listen intently.

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1           The Judge is going to tell you what the law is  
2   in this case. She'll give you instructions on that  
3   law. She's going to ask you to apply the law to  
4   the facts and the evidence in this case. After  
5   that, you'll have the unique opportunity to speak  
6   with the voice of justice. Ladies and gentlemen,  
7   how loud will your voice speak? Thank you.

8           THE COURT: Mr. Durant?

9           MR. DURANT: Ladies and gentlemen,  
10   my name is Winston Durant, and I represent  
11   Mr. David Watkins. Mr. Kidd has just set forth  
12   what the prosecution in this case is going to be.  
13   And as the Judge would instruct you, just before  
14   you start your deliberation, after you've heard all  
15   of the evidence, is that nothing that we say here  
16   in opening statement or closing statement should be  
17   considered as evidence, because it is not evidence.  
18   It's just what we believe the evidence will show.

19           And it is not as clear as Mr. Kidd would like  
20   for you to believe. He would concede that my  
21   client, Mr. David Watkins; Robert Watkins, his  
22   cousin; Latoya Davis; and the deceased,  
23   Jonathan Farrell were playing cards. I think you  
24   would see through the evidence that there was the  
25   use of alcohol by these individuals and the use of

1 drugs and that several of the people involved in  
2 this tragic episode were impaired by alcohol and  
3 drugs.

4 And let me, hasten to add, it's going to be  
5 assorted set of evidence that you're going to hear.  
6 But please don't let that distract you from what  
7 your purpose is in hearing the evidence and taking  
8 the Judge's instruction and deliberating and  
9 reaching a decision. Please don't let that  
10 distract you.

11 You're going to see some horrible photographs.  
12 And I ask you, in my opening statement, please  
13 don't let -- although it is easy for this to  
14 happen -- but please don't let sympathy or bias or  
15 fear enter into your deliberation, because that's  
16 not what it's all about. I ask you to be  
17 objective, listen to every witness and evaluate  
18 their testimony, whether it's a police witness or  
19 whether it's a civilian witness.

20 The Judge will instruct you -- and I think you  
21 heard some of it during voir dire this morning --  
22 that you're not supposed to give any more credence  
23 or credibility to a police witness over a regular  
24 witness. You're the ultimate judge. You're going  
25 to make the decision as to who was telling the

1 truth, who was credible, or who was not telling the  
2 truth.

3 You're going to see the video of my client  
4 giving his statement, and I -- and, as I said, it's  
5 assorted kind of set of facts. But please don't  
6 let that interfere, because whether he, indeed,  
7 urinated or kicked Mr. Farrell, he's not charged  
8 with those -- with anything concerning that. He's  
9 charged with murder. That is what he's charged  
10 with, murder -- intentional murder. Must have  
11 specific intent to commit a murder.

12 And as I just stated to you, everybody was  
13 drinking just prior to what occurred. We don't  
14 know what precipitated the argument. You really  
15 don't. As Mr. Kidd told you, there were four  
16 people involved here. We don't know who struck who  
17 first. We don't know any of that. We don't know  
18 what caused the striking of the blows. We don't  
19 have a weapon.

20 Yes, Mr. Farrell was shot, but we don't know  
21 who shot him. And it is our position that before  
22 you can convict my client, you have to be sure,  
23 beyond a reasonable doubt, that he had specific  
24 intent to commit a murder with what he's charged  
25 with, intentional murder. Was there specific



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1 intent? I think that after you've heard all of the  
2 evidence, you will conclude there was no specific  
3 intent to commit murder.

4 So, as I ask you and asked you in voir dire  
5 earlier this morning, concerning the presumption of  
6 innocence, that is evidence. The presumption of  
7 innocence is evidence. That accompanies the  
8 defendant into the jury deliberation, and it does  
9 not disappear until you have reached a verdict  
10 beyond a reasonable doubt. So I ask you to keep a  
11 very opened mind about every witness that comes to  
12 the stand. Keep an opened mind, because I am  
13 convinced that after you've heard all of the  
14 witnesses, I'm convinced that you will find for the  
15 defendant, that the defendant did not have any  
16 specific intent. He did not fire a shot or, put it  
17 another way, the prosecution is not going to be  
18 able to prove beyond a reasonable doubt that  
19 David Watkins had specific intent and fired a shot  
20 or shots that killed Jonathan Farrell. Thank you  
21 very much.

22 THE COURT: Are you ready?

23 MR. KIDD: Your Honor, State calls  
24 Detective Geno Howton.

25 THE COURT: If you would, raise your

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1 right hand.

2 DETECTIVE GENO HOWTON

3 The witness, having first been duly sworn or  
4 affirmed to speak the truth, the whole truth, and  
5 nothing but the truth, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. KIDD:

8 Q. Sir, if you would, please state your name  
9 for the ladies and gentlemen of the jury, please?

10 A. Corporal Geno Howton.

11 Q. Corporal Howton, how are you currently  
12 employed?

13 A. I'm a homicide investigator for  
14 Montgomery Police Department.

15 Q. How long have you been working in law  
16 enforcement?

17 A. Nineteen years.

18 Q. How long have you been a detective?

19 A. Right about eight years.

20 Q. And how long have you been working  
21 homicides here in Montgomery?

22 A. Four-and-a-half years.

23 Q. Detective Howton, as a homicide  
24 investigator, specifically, what are your duties  
25 and obligations, in just layman terms, in the

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1 investigation of a homicide?

2 A. To gather information, put together and  
3 do a case file, and how the information developed a  
4 suspect, and make an arrest.

5 Q. Now, Detective Howton, I'm going to  
6 direct your attention back to October the 19th of  
7 1999. Are you familiar with that particular date?

8 A. Yes.

9 Q. I believe it was actually on the morning  
10 of the 20th of October. You were dispatched to an  
11 area on Keystone Street here in Montgomery; is that  
12 correct?

13 A. Yes, sir.

14 Q. What was your purpose for going there?

15 A. We had -- we were notified of a death  
16 over at the dead end of Keystone Street.

17 Q. When you arrived there at Keystone  
18 Street, what was going on and who was present?

19 A. Well, we had marked patrol units and  
20 patrol supervisors over there. When we got there,  
21 they led us back to the ditch area at the dead end,  
22 and there they took us to a body they found in the  
23 ditch.

24 Q. Okay. Did you actually -- or did you  
25 have the opportunity to observe the body

1       undisturbed?

2             A.     Yes.

3             Q.     And did you also have the occasion to  
4       observe some items of physical evidence?

5             A.     Yes.

6             Q.     If you could, describe this area that the  
7       victim was found in.

8             A.     Well, the ditch -- there's actually two  
9       parts of that ditch. One part runs north and  
10      south. The second part is a small, I guess,  
11      secondary type ditch. It runs along the railroad  
12      tracks. It runs east and west. And the victim was  
13      found in the secondary portion of that ditch. He  
14      was laying in a westerly direction. And this ditch  
15      is at the south end of Keystone Street.

16            Q.     Now, Detective Howton, I'm going to ask  
17      you -- this is a crime scene video, I believe,  
18      State's Exhibit No. 1.

19                   MR. KIDD: I'll mark it for  
20      identification purposes, Mr. Durant.

21            Q.     Are you familiar with this video?

22            A.     Yes.

23            Q.     And does this video accurately reflect  
24      the crime scene as it was there when you arrived  
25      that morning?

1 A. Yes.

2 MR. KIDD: Your Honor, we offer  
3 State's 1 at this time.

4 THE COURT: Admitted.

5 (State's Exhibit No. 1 was admitted  
6 into evidence.)

7 MR. KIDD: If the Court will indulge  
8 me for must a moment?

9 (Brief second was taken.)

10 Q. Detective Howton, I'm going to show you  
11 what I've marked for identification purposes,  
12 State's Exhibit No. 2. Can you identify State's 2  
13 for me, please?

14 A. Well, it appears to be an aerial  
15 photograph of the area of Keystone Street.

16 Q. Detective Howton, I'm going to allow you  
17 to take that -- and this is a laser pointer. If  
18 you will, show me on that aerial photograph, the  
19 location where this crime allegedly occurred and  
20 began?

21 A. Well, that should be the area where the  
22 body was found right there.

23 Q. Okay. And that's the ditch right there.  
24 Does this photograph accurately reflect the aerial  
25 photograph of the crime scene as it occurred there

1 on that morning?

2 A. Well, that's the area, yes.

3 Q. Okay.

4 MR. KIDD: Your Honor, we offer  
5 State's 2 at this time.

6 THE COURT: Admitted.

7 (State's Exhibit No. 2 was admitted  
8 into evidence.)

9 Q. Detective Howton, I'm going to show you  
10 what I've marked for identification purposes as  
11 State's Exhibit No. 42. Are you familiar with  
12 State's 42?

13 A. It appears to be the area of Keystone  
14 Street and Knox Street.

15 Q. Will State's Exhibit No. 42 help you  
16 describe to the jurors where particular pieces of  
17 physical evidence were found?

18 A. Yes.

19 Q. Detective Howton, this would be State's  
20 Exhibit No. 2?

21 A. Yes.

22 Q. And this would be State's Exhibit No. 42;  
23 is that correct?

24 A. Yes.

25 Q. Now, Detective Howton, when you arrived

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1 at the crime scene, where was your attention first  
2 directed toward?

3 A. Down here at the dead end in the  
4 secondary area of the ditch.

5 Q. What pieces of physical evidence did you  
6 see there in that particular area?

7 A. We had the victim's body and his  
8 clothing. We found a .22 caliber casing, which was  
9 laying in the ditch next to the victim. And we  
10 also found a box of Black and Mild cigars in that  
11 area.

12 Q. Now, Detective Howton, I'm going to show  
13 you what's been marked for identification purposes  
14 as State's Exhibit No. 3. Are you familiar with  
15 this photograph?

16 A. Yes, sir.

17 Q. And what would this photograph represent?

18 A. That's the victim, Mr. Farrell, lying in  
19 the ditch.

20 Q. And does this photograph accurately  
21 reflect the condition of Mr. Farrell's body when  
22 you came across it there that morning?

23 A. Yes, sir.

24 MR. KIDD: Your Honor, we offer  
25 State's 3 at this time.

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1 THE COURT: Admitted.

2 (State's Exhibit No. 3 was admitted  
3 into evidence.)

4 Q. Detective, I'm now going to show you what  
5 I've marked for identification purposes as State's  
6 Exhibit No. 4. Can you describe this photograph  
7 for me?

8 A. That's the victim, Mr. Farrell, laying in  
9 the ditch. The camera angle is just different.

10 Q. What, if any, injuries can you see in  
11 that photograph?

12 A. Well, if you look real carefully, you can  
13 see where blood and some damage to the head is  
14 right here on the right side of his head.

15 Q. Does this photograph accurately reflect  
16 the condition of Mr. Farrell's body from the  
17 reverse angle?

18 A. Yes.

19 MR. KIDD: Your Honor, we offer  
20 State's 4 at this time.

21 THE COURT: Admitted.

22 (State's Exhibit No. 4 was admitted  
23 into evidence.)

24 Q. Detective Howton, I'm now going to show  
25 you what I've marked for identification purposes as



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1 State's Exhibit No. 5. Can you describe State's 5  
2 for me, please?

3 A. That's the graffiti.

4 MR. DURANT: Objection. May we  
5 approach?

6 (Bench conference was held.)

7 THE COURT: I'm going to overrule  
8 your objection. I can see it now.

9 Q. Detective Howton, can you describe  
10 State's Exhibit No. 5 for me, please?

11 A. That's the same drainage ditch, the  
12 secondary ditch where the victim was found laying  
13 in.

14 Q. And does this photograph accurately  
15 reflect the condition of the ditch as it was when  
16 you found Jonathan Farrell there that morning?

17 A. Yes, sir.

18 MR. KIDD: Your Honor, we offer  
19 State's 5.

20 THE COURT: Admitted.

21 (State's Exhibit No. 5 was admitted  
22 into evidence.)

23 Q. Detective, now, I'm going to show you  
24 what I've marked for identification purposes as  
25 State's Exhibit No. 6. Can you identify this

1 photograph for me, please?

2 A. That is the same secondary ditch where  
3 the victim was found lying. You can tell it's  
4 running east and west along a main ditch line.

5 Q. Now, Detective Howton, I'm going to refer  
6 you back to what's been offered as State's Exhibit  
7 No. 42. Can you show the jurors where State's  
8 No. 6 is in relation to this particular diagram?

9 A. Well, if you're talking about the body,  
10 it's sitting right here in the secondary ditch.  
11 This is the main ditch that's running north --  
12 well, we call it north and south -- but the  
13 secondary ditch is right here and the body is  
14 laying right there next to the tracks.

15 Q. And this photograph, State's Exhibit  
16 No. 6, is from what direction?

17 A. It's going to be -- he's facing west --  
18 or southwest.

19 Q. Does this photograph accurately reflect  
20 the condition of Mr. Farrell from that view --

21 A. Yes.

22 Q. -- that morning?

23 A. Yes.

24 MR. KIDD: Your Honor, we offer  
25 State's 6 at this time.

1 THE COURT: Admitted.

2 (State's Exhibit No. 6 was admitted  
3 into evidence.)

4 Q. Detective Howton, I'm going to show you  
5 what I've marked for identification purposes as  
6 State's Exhibit 7. Can you identify State's 7 for  
7 me, please?

8 A. Well, that's basically the same angle  
9 photograph except it's further back. But you have  
10 the ditch here. The railroad tracks right above  
11 and the victim laying right in here in the  
12 secondary ditch.

13 Q. Where would the intersection of  
14 Keystone -- or where would Keystone dead end in  
15 relation to this photograph?

16 A. Right over in here.

17 Q. And, approximately, how far is the  
18 individual that's taking that photograph from the  
19 ditch there?

20 A. What, a hundred feet, maybe. I don't  
21 know. I'm not real sure.

22 MR. KIDD: Your Honor, we offer  
23 State's 7 at this time.

24 THE COURT: Admitted.

25 (State's Exhibit No. 7 was admitted

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1 into evidence.)

2 Q. Detective, I'm going to show you what  
3 I've marked for identification purposes as  
4 State's 8. Can you identify State's 8 for me,  
5 please?

6 A. That's the photograph of the crime scene  
7 area.

8 Q. What is depicted there beneath that light  
9 pole there?

10 A. Dirt mound.

11 Q. I'm going to reference you back to what  
12 we've offered as State's Exhibit No. 42. Can you  
13 show the ladies and gentlemen of the jury where  
14 those dirt mounds are at on there?

15 A. There's one mound here at the dead end.  
16 And you have one just adjacent to it.

17 MR. KIDD: Your Honor, we offer  
18 State's 8 at this time.

19 THE COURT: Admitted.

20 (State's Exhibit No. 8 was admitted  
21 into evidence.)

22 Q. Detective Howton, I'm going to show you  
23 now what I've marked for identification purposes as  
24 State's 9. Can you identify this photograph for  
25 me, please?

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1           A.    Yes, sir. That's the second mound and  
2           you're facing back toward the church would be a  
3           northeast shot photograph.

4           Q.    Where would the photographer be standing  
5           in relation to the ditch?

6           A.    He is just north of the ditch, next to  
7           that larger mound of dirt.

8                   MR. KIDD: Your Honor, we offer  
9           State's 9.

10                   THE COURT: Admitted.

11                   (State's Exhibit No. 9 was admitted  
12           into evidence.)

13           Q.    Detective Howton, I'm going to show you  
14           what I've marked for identification purposes as  
15           State's 10. Can you identify this photograph for  
16           me, please?

17           A.    That's taken from the top of the railroad  
18           tracks and that's a photograph of the main ditch.

19           Q.    Detective Howton, with your laser  
20           pointer, can you indicate on that photograph where  
21           Jonathan Farrell's body would be in relation to  
22           that photograph?

23           A.    He's going to be back this way.

24                   MR. KIDD: Your Honor, we offer  
25           State's 10.

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1 THE COURT: Admitted.

2 (State's Exhibit No. 10 was admitted  
3 into evidence.)

4 Q. Detective Howton, can you identify  
5 State's 11 for me, please?

6 A. That's going to be a picture of the  
7 secondary ditch, it appears. That's what it  
8 appears to be.

9 MR. KIDD: Your Honor, we offer  
10 State's 11 at this time.

11 THE COURT: Admitted.

12 (State's Exhibit No. 11 was admitted  
13 into evidence.)

14 Q. Detective Howton, I'm going to show you  
15 what I've marked as State's 13. Can you identify  
16 this photograph for me, please?

17 A. That is a photograph of the victim's head  
18 in the water. He has two wounds. One here on the  
19 right side and one near the top of the head.

20 MR. KIDD: Your Honor, we offer  
21 State's 13.

22 THE COURT: Admitted.

23 (State's Exhibit No. 13 was admitted  
24 into evidence.)

25 MR. KIDD: Your Honor, at this point

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1 in time, I would like to ask permission to play the  
2 videotape of the crime scene, if I may do so?

3 THE COURT: Has it been identified?

4 MR. KIDD: Yes, ma'am, it was.

5 THE COURT: Is that your first --

6 MR. KIDD: That's Exhibit No. 1.

7 (Videotape being played for  
8 the jury.)

9 Q. Detective Howton, can you show me, with  
10 your pointer, where the body is in relation to this  
11 photograph?

12 A. It's going to be right over in here.  
13 It's going to be on the other side of this dirt  
14 mound here.

15 Q. That video that's being shot, how far is  
16 that from the very end of the street?

17 A. Probably about ten, fifteen -- maybe  
18 twenty yards or more.

19 Q. Okay.

20 (Videotape stopped.)

21 Q. Detective Howton, the video depicts two  
22 different crime screens or two different areas; is  
23 that correct?

24 A. Yes, sir.

25 Q. Show the jurors where the body was found

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1 again, please.

2 A. The body was found down here at the dead  
3 end in the ditch.

4 Q. And, Detective Howton, the second area  
5 that was depicted in that crime scene video, can  
6 you show the ladies and gentlemen of the jury where  
7 that was at?

8 A. It's going to be up here at the top.

9 Q. Approximately, in your best judgment, how  
10 far is it from that residence, 659 Keystone, to  
11 where the victim's body was found?

12 A. Say over a hundred yards.

13 Q. Do you know who resides at 659 -- or who  
14 did reside at 659 Keystone?

15 A. Robert Watkins.

16 Q. And, Detective Howton, after collecting  
17 this evidence, did you know, at that particular  
18 time, who the victim was? Did you know his  
19 identity?

20 A. No.

21 Q. How were you able to determine who that  
22 victim was?

23 A. His prints were sent to DFS and the State  
24 eventually came back with a hit on the prints. And  
25 then after that, we found some prints at



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1 headquarters and we took prints, which were  
2 obtained from DFS, and took them down to the ET  
3 office, where the fingerprint examiner matched the  
4 prints.

5 Q. Now, how long, period of time, lapsed  
6 from the time this actually occurred until you were  
7 able to identify who the victim was?

8 A. About two days.

9 Q. And during that time, was this  
10 investigation ongoing?

11 A. Yes.

12 Q. And during that time, did you have any  
13 information connecting David Watkins to that crime?

14 A. No.

15 Q. At what point in time -- or tell me how  
16 David Watkins actually became a suspect?

17 A. Well, we ended up receiving some  
18 information that some of the other detectives  
19 developed and eventually had led us to a girl by  
20 the name of Latoya Davis. And then from her, we  
21 eventually picked up Robert Watkins. And then we  
22 ended up getting David Watkins.

23 Q. Okay. So David Watkins was the last of  
24 the three individuals who you actually picked up?

25 A. Right. He was one of the last ones.

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1 Q. Now, after David Watkins was picked up,  
2 did someone there at the police department have an  
3 opportunity to speak with him?

4 A. Yes.

5 Q. And who was that? Do you know?

6 A. Sergeant Loria.

7 MR. KIDD: Judge, I don't believe I  
8 have any further questions for Detective Howton.

9 CROSS-EXAMINATION

10 BY MR. DURANT:

11 Q. Detective Howton, when was the first time  
12 you became involved in the case?

13 A. The morning we were notified of the body  
14 found in the ditch.

15 Q. There were two scenes shown, the scene  
16 where the ditch was where the body was found and  
17 also the scene of the area around Keystone and  
18 Knox; is that correct?

19 A. Yes.

20 Q. And Mr. Kidd, in his direct examination,  
21 stated that there were bloodstains; is that  
22 correct?

23 A. Yes, sir.

24 Q. Did they take samples of those  
25 bloodstains?

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1 A. Yes.

2 Q. Okay. Were they able to come up with any  
3 identification of those bloodstains?

4 A. I believe they came back belonging to  
5 Mr. Farrell.

6 Q. As far as the cigar -- you said there was  
7 a cigar box found?

8 A. Yes.

9 Q. What kind of box was it?

10 A. It was Black and Mild.

11 Q. Black and --

12 A. Black and Mild cigar box.

13 Q. Did that belong to Mr. Farrell?

14 A. Um, I don't know.

15 MR. DURANT: That's all.

16 THE COURT: Anything else for him?

17 MR. KIDD: Nothing, Your Honor.

18 THE COURT: Come up here and let me  
19 see where we are with witnesses.

20 (Bench conference was held.)

21 THE COURT: It's probably going to  
22 be a good time to take a break. I'm going to give  
23 you fifteen minutes, and we'll get you in the jury  
24 assembly room. And, at that time, Mr. Powell, you  
25 can move that. Can they get by -- y'all can leave

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1 at this time.

2 (Brief recess was taken.)

3 THE COURT: Mr. Johnson had a  
4 request -- and I -- we probably need to get this on  
5 the Record -- for his client to come and remain in  
6 the courtroom during this trial. And I understand  
7 the State had listed him as a witness.

8 And, Mr. Johnson, you said he would invoke the  
9 fifth?

10 MR. JOHNSON: He would have. He was  
11 never served with the State's subpoena. He was  
12 only served with a subpoena by Mr. Hartley to  
13 testify for Latoya. He was never served with a  
14 subpoena in this trial. So, we feel like he should  
15 be able to remain in the courtroom. He will revoke  
16 his fifth amendment privilege not to testify. I  
17 think the case law says he can't be called if he's  
18 going to revoke his fifth amendment privilege.

19 THE COURT: I'm not sure. I haven't  
20 had this come up before.

21 MR. KIDD: I haven't either, Judge.

22 THE COURT: He hasn't been  
23 subpoenaed --

24 MR. KIDD: Judge, we can go get him  
25 served, I mean, if that's the problem.

1 THE COURT: I don't think that's  
2 really going to solve the problem.

3 Do you have some law?

4 MR. CARTER: Basically under 9.3  
5 and --

6 THE COURT: 9.3, criminal rule?

7 MR. CARTER: 615.

8 MR. POWELL: Rule of Evidence, 615,  
9 Your Honor, and Criminal Procedure, 9.3.

10 THE COURT: Okay.

11 MR. CARTER: Basically, that they  
12 should be excluded if they're under subpoena.

13 THE COURT: Well, he's not under  
14 subpoena right now. I know he can be put under  
15 subpoena. So, I'm not -- you say -- what do you  
16 have as far as the law?

17 MR. JOHNSON: Well, Judge, I don't  
18 have the law. The 11th Circuit in Atlanta recently  
19 ruled on a case that the Court had about excluding  
20 witnesses, but not public from the courtroom --  
21 because --

22 THE COURT: But I think this is a  
23 little different situation.

24 MR. JOHNSON: Well, let me just  
25 say --

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1 THE COURT: Go ahead.

2 MR. JOHNSON: Let me just say. The  
3 defendant has not been -- my client has not been  
4 disruptive. He's not made any comments to anyone.  
5 He's not hurting anyone by sitting in the courtroom  
6 except us in preparing his defense on his case.  
7 And this is a public trial. Unless he's disruptive  
8 or going to be a witness, he cannot be excluded  
9 from the courtroom. And I think the right goes to  
10 this defendant of a public trial also. I don't  
11 know if they want to assert their right to a public  
12 trial, but --

13 THE COURT: I'm not going to get  
14 into that area. They have not subpoenaed him.  
15 They can subpoena him -- I'm sure -- could I see  
16 what rule?

17 (Attorney hands it over.)

18 THE COURT: You have it marked.  
19 Until all witnesses have been released by the  
20 Court -- if your client takes the fifth, I don't  
21 know why I wouldn't release him.

22 MR. JOHNSON: He would. And I think  
23 the case law is clear that the State cannot call a  
24 witness to the stand, knowing he's going to take  
25 the fifth amendment.

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1 THE COURT: And you cited another --

2 MR. CARTER: Yes. Rule 615, Your

3 Honor.

4 THE COURT: Is your client here?

5 MR. JOHNSON: He's out in the hall.

6 THE COURT: I think we should get  
7 him in here. I know you're on his behalf, but I  
8 want to hear from him whether he would be a witness  
9 if subpoenaed.

10 MR. JOHNSON: Okay.

11 (In the presence of Mr. Johnson's  
12 client.)

13 THE COURT: And, for the Record,  
14 would you state your name?

15 CO-DEFENDANT: Robert E.  
16 Watkins, Jr.

17 THE COURT: And, Mr. Watkins, your  
18 attorney has indicated if you were called as a  
19 witness in this case, you would invoke your fifth  
20 amendment privilege not to testify. And have you  
21 discussed this with him?

22 CO-DEFENDANT: Yes, ma'am.

23 THE COURT: And would that be your  
24 position if you were called as a witness?

25 CO-DEFENDANT: Yes, ma'am.

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1 THE COURT: Although, the State may  
2 not have subpoenaed him in this case, they  
3 certainly can subpoena him. But if they did and he  
4 takes the fifth, I don't know why I wouldn't  
5 release him from the rule or release him as a  
6 potential witness, so I'm going to allow him to  
7 stay in here.

8 MR. JOHNSON: Okay. Thank you.

9 THE COURT: Okay. Anything else?

10 MR. KIDD: Judge --

11 THE COURT: I don't know who else is  
12 in the courtroom. A number of people came back in  
13 just then and -- I know the victim's family, where  
14 you are. And are the others, Mr. Durant, are they  
15 friends or family of the defendant?

16 MR. KIDD: Judge, Latoya Davis'  
17 father is here. I know that there was a subpoena  
18 issued for him, because he is on the video with  
19 her. And I would ask --

20 THE COURT: What's his name --

21 Latoya Davis' father, you have been subpoenaed as a  
22 witness -- and take off your hat when you come in  
23 the courtroom -- you will need to leave the  
24 courtroom. And Latoya Davis, was she subpoenaed  
25 too?



1 MR. KIDD: Yes, ma'am, she was. She  
2 is a defendant as well.

3 THE COURT: I know. But was she  
4 subpoenaed?

5 MR. KIDD: Judge, if she was not  
6 served, we can get her served. We intended to  
7 serve her, but I'm assuming your rule --

8 THE COURT: It's going to be the  
9 same situation. I don't want the two families to  
10 have any contact. When we take a break, I think it  
11 would be easier for y'all to go to the second  
12 floor. And for anyone -- other spectators to go to  
13 the fourth floor. And that way there won't be any  
14 type of contact with the jurors or the family.

15 Okay. Anything else?

16 (Brief recess was taken.)

17 (In the presence of the jury.)

18 THE COURT: Okay. Your next  
19 witness?

20 MR. POWELL: Your Honor, State calls  
21 Detective Loria.

22 THE COURT: If you would raise your  
23 right hand?

24 DETECTIVE A. LORIA

25 The witness, having first been duly sworn or

1 affirmed to speak the truth, the whole truth, and  
2 nothing but the truth, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. POWELL:

5 Q. Could you state your name for the jury?

6 A. Sergeant Tony Loria, Montgomery Police  
7 Department.

8 Q. Sergeant Loria, where are you from?

9 A. Originally?

10 Q. Originally.

11 A. New Jersey.

12 Q. New Jersey. And how long have you been a  
13 police officer with the Montgomery Police  
14 Department?

15 A. Almost nine -- ten years.

16 Q. And how are you currently employed,  
17 what's your official capacity there?

18 A. Assigned to the homicide unit as a  
19 supervisor.

20 Q. Okay. Do you have a specific rank?

21 A. Sergeant.

22 Q. And how long have you been assigned to  
23 the homicide unit at the Montgomery Police  
24 Department?

25 A. About sixteen months -- approximately

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1 sixteen or seventeen months.

2 Q. Okay. In your capacity as a homicide  
3 detective, how many cases do you think you've  
4 worked in those sixteen months? Hundreds?

5 A. I've been involved in several.

6 Q. Clear enough. Now, Sergeant Loria, I  
7 want to point your attention to an incident that  
8 occurred over at the Bear Match neighborhood over  
9 on Keystone Street. Are you familiar with the  
10 incident that I'm referring to?

11 A. Somewhat, yes.

12 Q. Now, were you involved in an  
13 investigation of a homicide involving a victim by  
14 the name of John Christopher Farrell?

15 A. I was.

16 Q. Okay. At some point, did you receive any  
17 instructions about this defendant here,  
18 David Watkins?

19 A. I was.

20 Q. Okay. What were you instructed to do?

21 A. After interviews were taken, we learned  
22 that David Watkins was involved in a homicide of  
23 John Farrell. We were told at that point that he  
24 was currently located at 1929 A Gibbs pertaining  
25 to -- at that particular time. I can't give you an

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1 exact time. I advised Detective Kennedy that she  
2 and I were going to that location and pick up --  
3 pick Kennedy up -- excuse me -- pick Watkins up.

4 Q. Now, Sergeant Loria, who is  
5 Detective Kennedy?

6 A. She was, at that time, a member of the  
7 homicide unit.

8 Q. And did the two of y'all go over there  
9 together to this location over on Gibbs Street  
10 looking for the defendant?

11 A. We did.

12 Q. And this was based on information you  
13 received throughout the investigation of this case?

14 A. Yes.

15 Q. Okay. Now, what day was that? Do you  
16 remember?

17 A. The -- if I can go to my notes -- it was  
18 on the 21st.

19 Q. What month?

20 A. October -- I'm sorry -- yeah,  
21 October 21st.

22 Q. What year?

23 A. 1999.

24 Q. So on October the 21st, 1999, you and  
25 Detective Kennedy went over to an address on Gibbs

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1 to find the defendant?

2 A. That's correct.

3 Q. Did you find him?

4 A. We did.

5 Q. What happened next?

6 A. We advised him he needed to come down to  
7 the police headquarters for an investigation. He  
8 was on the telephone. I believe making attempts to  
9 get someone to watch some children or a child there  
10 at that location. Subsequently, we transported him  
11 down to police headquarters.

12 Q. So you took the defendant down to police  
13 headquarters?

14 A. We did.

15 Q. Now, just for the Record, Sergeant, is  
16 the defendant you transported or the individual you  
17 transported down to police headquarters in the  
18 courtroom here today?

19 A. He is.

20 Q. Could you point him out to the jury?

21 A. Sitting to my right, wearing a white  
22 shirt.

23 Q. How has his appearance, if -- changed, if  
24 any, between today and the time you picked him up  
25 back in October? Can you recall?

1 A. I don't recall his hair being quite like  
2 that. I don't believe he had that style of hairdo  
3 or that much hair on his head at the time.

4 Q. Okay. Other than the hair, is that the  
5 same person you transported?

6 A. It appears to be, yes.

7 Q. Okay. Now, what happened once you got  
8 down to police headquarters with the defendant?

9 A. After notification --

10 Q. Let me stop you right there. What do you  
11 mean when you say after notifications?

12 A. Well, at the time, a Lieutenant, who I  
13 was working for, let him know we got him down to  
14 headquarters, notify the case agent. We get him  
15 down to headquarters, standard procedure to  
16 interview and, of course, mirandise the subject.

17 Q. Okay. Now, you made reference to a case  
18 agent in this case?

19 A. That's correct.

20 Q. Who was that?

21 A. At the time, Detective Howton.

22 Q. Okay. Now, you also made reference to  
23 mirandising this individual. Was that done?

24 A. Yes, it was.

25 Q. Okay. Now, I'm going to show you what

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1 we're going to mark as State's 43. Sergeant Loria,  
2 do you recognize State's 43?

3 A. Yes, I do.

4 Q. What is it?

5 A. It's a standard miranda form which the  
6 detective division of Montgomery Police Department  
7 uses.

8 Q. Is that a fair and accurate copy of the  
9 actual form that you presented to the defendant on  
10 this time in question when you were down at police  
11 headquarters?

12 A. Yes.

13 Q. Okay. Now, did the defendant -- did you  
14 read that form to the defendant?

15 A. I did.

16 Q. Did he appear to understand that form and  
17 substance that was read?

18 A. If you notice these lines that separate  
19 inside the miranda itself is where we pause after  
20 almost each sentence. We break it down and ask it  
21 on an individual basis, if you would understand it,  
22 instead of reading it completely as one paragraph.

23 Q. Sergeant Loria, would you read that  
24 paragraph to the jury like you read it to the  
25 defendant?

1 A. "Before asking you any questions, I must  
2 explain to you that you can remain silent."

3 Q. Would you speak up a little bit for me,  
4 Sergeant? I'm having a hard time hearing you back  
5 here.

6 A. "Before asking you any questions, I must  
7 explain to you that you can remain silent." And I  
8 would have to reflect the standard what I would do  
9 in previous cases, do you understand that? Then  
10 they'll give a response back.

11 Q. Do you recall, did he give a response  
12 back?

13 A. I would have to --

14 Q. Eventually, we're going to get --

15 THE COURT: Wait. Don't talk at the  
16 same time.

17 Q. Sergeant Loria, eventually, we're going  
18 to get to the audio and the video portion.

19 A. That's --

20 Q. Would the defendant's response to these  
21 questions be indicated on that?

22 A. Yes.

23 Q. Okay. So continue reading the form.  
24 "That anything you say can be used against you in  
25 court." And we would say, Do you understand that?



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1 "That you will have the right to talk to a  
2 lawyer first, and you have the right to the advice  
3 and presence of a lawyer even though you cannot  
4 afford to hire one." Again, we stop and wait for a  
5 response.

6 "If you cannot afford to hire a lawyer during  
7 your interrogation, the Court will appoint one  
8 before we question you." Again, we pause.

9 "If you want to answer questions now, you can  
10 do so. But you can stop answering at any time."  
11 Do you understand what I just read? That's not on  
12 there, but -- and what I'll do is sign --

13 Q. Now, on this particular time when you  
14 have the defendant at police headquarters, did he  
15 sign that miranda form?

16 A. Yes, he did.

17 Q. What was he indicating to you by signing  
18 that miranda form?

19 A. That he understands what I just read to  
20 him. And at that particular time, he did not have  
21 any questions pertaining to his rights.

22 Q. Now, at that time, did the defendant  
23 invoke his right to have an attorney present?

24 A. No.

25 Q. At that time, did the defendant say, no,

1 I don't want to talk to you?

2 A. No.

3 Q. At that time, did the defendant seem like  
4 he was willing to give you a statement?

5 A. Yes.

6 Q. How did he indicate that to you?

7 A. Well, as standard, after reading this  
8 bottom paragraph stating that he understood what  
9 was read to him, he agreed to speak to us.

10 Q. Now, were you alone when you read this  
11 form to him?

12 A. No.

13 Q. Who was with you?

14 A. Detective Kennedy.

15 Q. So there were two detectives in there  
16 with the defendant?

17 A. Yes.

18 Q. Okay. At any point when y'all were  
19 explaining these rights, did you threaten him?

20 A. No.

21 Q. Did you ever say, I'm going to go easy on  
22 you if you cooperate with us?

23 A. No, sir.

24 Q. Did you ever physically touch him or hit  
25 him or anything like that?

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1 A. No.

2 Q. Is any of that standard procedure for the  
3 Montgomery Police Department?

4 A. No, it's not. No.

5 Q. Do you -- did you do anything in  
6 questioning this defendant other than read him that  
7 miranda form before this interview started?

8 A. No.

9 Q. Now, was there -- how was the interview  
10 recorded?

11 A. The actual -- well, we audiotape and  
12 videotape -- not every interview -- this particular  
13 one was audio and videotaped.

14 Q. Why did you do both in this particular  
15 case?

16 A. Not every witness is videotaped.  
17 Depending on the severity of the case, such as  
18 murder, capital murder. At this time, we were  
19 going for capital murder. And for that matter, any  
20 murder investigation we feel strongly to videotape  
21 and interview every defendant or a very crucial  
22 witness.

23 Q. So in going in this interview, was there  
24 any question to you whether or not the defendant  
25 understood you were about to question him regarding

1 the murder of John Farrell?

2 A. No.

3 Q. He understood why he was there?

4 A. Yes, he did.

5 Q. And he gave you all indications of why he  
6 was there?

7 A. Yes.

8 Q. Did you explain to him why he was there?

9 A. He was actually answering questions  
10 pertaining to the homicide.

11 Q. Okay. Now, have you had an  
12 opportunity -- you were there when you took the  
13 statement?

14 A. I was.

15 Q. Okay. Now, basically, I want to show you  
16 what's been marked as State's Exhibit No. 12. Do  
17 you recognize this?

18 A. I recognize it to be a videotape and a  
19 label stating victim, Jonathan Farrell and the  
20 suspect, David Watkins.

21 Q. Okay. Now, based on the label from that  
22 videotape, does that indicate to you that that  
23 would be a fair and accurate copy of the videotaped  
24 statement that was taken from David Watkins on the  
25 date indicated?

1           A.    Yes, it would.

2                   MR. POWELL:  We offer State's 12,  
3   Your Honor.

4                   THE COURT:  Admitted.  
5                   (State's Exhibit No. 12 was admitted  
6                   into evidence.)

7                   MR. POWELL:  Your Honor, we would  
8   also like to admit State's 43 at this time.

9                   THE COURT:  Okay.  That's the  
10  signed --

11                   MR. POWELL:  The miranda form.

12                   THE COURT:  Admitted.  
13                   (State's Exhibit No. 43 was admitted  
14                   into evidence.)

15           Q.    Okay.  Now, on top of having a videotape  
16  of this statement was there also audiotapes made of  
17  it?

18           A.    There was.

19           Q.    Do you have those audiotapes or are they  
20  still in the possession of Detective Howton?

21           A.    They may be with Detective Howton out in  
22  the hallway.

23                   MR. POWELL:  Your Honor, may I have  
24  a moment to get those from Detective Howton?

25                   THE COURT:  Yes.

(Brief moment was taken.)

Q. Now, I'm showing you what I've marked as State's 44. Do you recognize that?

A. I recognize the envelope.

Q. Would you open that envelope, please? What is it?

A. Two cassette tapes.

Q. Now, Sergeant Loria, based on the markings on the envelope that you just opened, what do those appear to be audio cassette tapes of?

A. Of David Watkins --

Q. Okay.

A. -- pertaining to the interview of David Watkins.

Q. And would those, to your knowledge, be fair and accurate audio depictions of the statement given to you by David Watkins?

A. Yes.

Q. And would those also be just another form of the same information that was taken on that videotape?

A. Yes. Actually -- what we do, standard is -- and I'm going by this indication of letter A on this particular tape -- by video also has a backup of taping audio. As well as this, the

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1 investigator, themselves, most of the time, in my  
2 cases, I can say I've always done it. I would have  
3 my own tape recorder and taking audio of that as  
4 well should there be any problems with the tapes.

5 Q. So inside State's 44 there are two  
6 cassettes; is that correct?

7 A. Yes.

8 Q. And one of them was marked with the  
9 letter A; is that correct?

10 A. Yes.

11 Q. And that is the audio visual man's backup  
12 cassette?

13 A. I didn't write that. Yes.

14 Q. Okay. And so the unmarked tape would be  
15 your audiotape?

16 A. That's correct.

17 Q. Okay.

18 MR. POWELL: We offer State's 44,  
19 Your Honor.

20 THE COURT: Admitted.

21 (State's Exhibit No. 44 was admitted  
22 into evidence.)

23 Q. Now, Sergeant Loria, I want you to think  
24 back and just kind of recall in your mind the  
25 statement given to you by David Watkins. I'm not

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1 going to ask you anything specific about it. I  
2 just want you to ask you about, basically, how loud  
3 he was when he gave you a statement. Was he easy  
4 to understand?

5 A. No, he wasn't.

6 Q. Why not?

7 A. Two reasons I can remember this -- one,  
8 is because I had to review this briefly prior to  
9 coming in here, getting ready for the interview  
10 itself. Second thing is, I've never had a case  
11 where someone urinated on a man that was --

12 MR. DURANT: Objection.

13 THE COURT: I'm going to sustain and  
14 exclude that last portion.

15 Q. I'm just simply asking you about the  
16 manner the defendant --

17 A. Very low toned mumbling.

18 Q. Okay. At some point -- where is the  
19 videotape positioned in relation to where you're  
20 actually conducting the interview?

21 A. It would be behind us.

22 Q. Behind you?

23 A. That's correct, inside a wall separating  
24 the audio and video between a two-way glass.

25 Q. So, have you had an opportunity to review



1 the video portion of the videotape?

2 A. I worked with the audiotape that was  
3 given to me.

4 Q. So you haven't necessarily listened to  
5 the videotape then?

6 A. No, I haven't.

7 Q. Okay. Now, when you are tape recording  
8 his statement, that actual cassette tape that  
9 you're talking about --

10 A. Yes.

11 Q. -- where is that tape recorder?

12 A. Depending on how the interview, if we had  
13 the table set there, we would sit it on the table.  
14 I don't recall the position of how the video  
15 interview was taken. It may very well have been --  
16 I have a microphone that I would attach to me, and  
17 it wouldn't be that far away from the subject --  
18 the person being interviewed.

19 Q. So your audiotape is going to be right  
20 there at the defendant?

21 A. Very close proximity, yes. Very close  
22 proximity.

23 Q. And the videotape may be stationed  
24 somewhere further away?

25 A. The recording device for the video will

1 be coming out of the ceiling -- directly centered  
2 in the room itself.

3 Q. So, basically, what I'm getting at,  
4 Sergeant Loria, is the sound quality on this  
5 audiotape and on this videotape may be different?

6 A. Yes.

7 Q. Okay. Do you think it may be necessary  
8 after we've had a chance to look at the videotape  
9 to listen to both, the video and the audio? Would  
10 that be unreasonable?

11 A. It wouldn't be unreasonable, no.

12 MR. POWELL: Okay. So I want to  
13 start with the videotape.

14 THE COURT: Let me ask. If for some  
15 reason some of you are watching the TV and others  
16 the screen, if you cannot see, let me know.

17 (Videotape being played.)

18 Q. Now, before we get started,  
19 Sergeant Loria, just so we're all clear, could you  
20 point out Detective Kennedy for the jury?

21 A. To my right, right there.

22 Q. And just for the Record, there are three  
23 people on the image on the video screen.  
24 Detective Kennedy is the one on the far right that  
25 we're looking at?

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1 A. That is correct?

2 Q. And which one is the defendant?

3 A. Standing or sitting between both  
4 detectives right there.

5 Q. And, again, just so we're finished here,  
6 which one is you?

7 A. To the left.

8 Q. All right.

9 THE COURT: Let -- is the TV screen  
10 interviewing with anyone's view?

11 (Juror raises hand.)

12 THE COURT: Okay. Come up here and  
13 let me --

14 (Bench conference was held.)

15 THE COURT: Let me explain. The TV  
16 has the sound. This does not have the sound. So  
17 we're going to try putting it to the side and see  
18 if you can see the big screen and hear the sound  
19 from the little screen.

20 MR. POWELL: Is that blocking y'all  
21 now?

22 (Jurors nod.)

23 Q. Now, Sergeant Loria, does this appear to  
24 be the statement that you took from David Watkins?

25 A. Yes.

1 (Tape being played.)

2 Q. Detective Loria, before we go to the  
3 audiotaped statement, I want to clarify a couple of  
4 things. Who were the three people that the  
5 defendant identified in the house?

6 THE COURT: Wait just a moment.  
7 Anyone that stays in the courtroom, I expect you to  
8 sit in a proper manner, not go to sleep. And if  
9 you need to go to sleep, you need to leave the  
10 courtroom at this time. Does anyone want to do  
11 that?

12 (No response.)

13 THE COURT: Then I expect you to sit  
14 in the courtroom properly. And you're not doing  
15 so. Do you understand that?

16 Let's take about a five-minute break. And if  
17 y'all will go to the jury assembly room.

18 (Out of the presence of the jury.)

19 THE COURT: If anyone is going to  
20 sleep in the courtroom, you need to leave now. I  
21 also expect anyone sitting together to sit  
22 separately and not be laying or having yourselves  
23 all draped over each other. Now, if you can't do  
24 that, you need to leave now or I will cite you for  
25 contempt of court. Do you understand that? And

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1 that's punishable by incarceration and a fine. If  
2 anyone needs to leave, you need to do so now. Do  
3 you understand that?

4 (Brief recess was taken.)

5 (In the presence of the jury.)

6 THE COURT: Okay. Mr. Powell?

7 Q. Sergeant Loria, before we go any further,  
8 who were the four people that the defendant  
9 identified in the house from his statement?

10 A. Robert Watkins, Jr. who has an alias or  
11 is referred to as Junior.

12 Q. Who was the next person?

13 A. Himself, David --

14 Q. Let me stop you right there. Now, when  
15 we're talking about the defendant, David Watkins,  
16 does he have an alias or street name?

17 A. Nard or Nod. It's -- on the arrest  
18 report, Nard. It's hard to understand. But we  
19 refer to him on the tape with other co-defendants  
20 or witnesses as Nod. Nod or Nard, if that --

21 Q. Do you know the defendant's middle name?

22 A. Lenard or Leonard.

23 Q. Now, the other person that was identified  
24 in the Davis -- in the videotape, the female, who  
25 was she?

1           A.     Latoya Davis, at that particular time,  
2     fifteen. Also referred, if you listen or just  
3     watch -- you'll listen to it in a second -- she's  
4     referred to as Toya.

5           Q.     That's Latoya Davis?

6           A.     Yes.

7           Q.     And how old is she?

8           A.     At the time of the incident, fifteen.

9           Q.     That's the person that the defendant said  
10    did all of this?

11          A.     That's correct.

12          Q.     Now, how old was the defendant at the  
13    time the statement was taken?

14          A.     Twenty years old.

15          Q.     What about the other individual,  
16    Robert Watkins, Jr.?

17          A.     Twenty-one. And then, of course -- well,  
18    you've heard them say -- refer to as the cat --  
19    meaning our victim, John. And at that particular  
20    time, he was twenty-one years of age.

21          Q.     So the victim was twenty-one?

22          A.     Yes.

23          Q.     John Farrell?

24          A.     That is correct.

25          Q.     So we got -- as far as Junior or

1 Robert Watkins, he's twenty-one --

2 THE COURT: Well, he's testified who  
3 was what. Move on.

4 MR. POWELL: Thank you, Your Honor.

5 Q. Now, I want to play for the jury, the  
6 video -- or the audio cassette portion of the  
7 statement, because the other was difficult to hear.  
8 Now, I'm going to be playing the tape that we  
9 marked as Exhibit No. 44 with the letter A on it.  
10 Which tape is that?

11 A. That would be the one where our evidence  
12 technician is at in the back room with the audio  
13 and video device.

14 Q. Where is that microphone located?

15 A. In the -- comes out of the ceiling in the  
16 center of the room.

17 Q. All right. And this is -- so we're all  
18 clear -- this is an audiotap

of the exact same

19        thing we just watched?

20            A.     Yes.

21                            (Audiotape played.)

22                            (Audiotape stopped.)

23            Q.     Sergeant Loria, on the videotape and the  
24        audiotape, you indicated the ending time of that  
25        interview; is that correct?



1 A. Yes.

2 Q. At any point after that, did you ever  
3 review the defendant?

4 A. No, I didn't.

5 MR. POWELL: No further questions at  
6 this time, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. DURANT:

9 Q. Sergeant Loria, how did you first make  
10 contact with David Watkins?

11 A. Give me a few seconds and let me look  
12 that up.

13 Q. When I say when was the first time, I'm  
14 speaking in terms of days. I'm not talking about  
15 any --

16 A. That evening?

17 Q. That evening. That was the 21st?

18 A. Yes, the 21st.

19 Q. How was he developed as a suspect?

20 A. We were advised to pick him up through  
21 Lieutenant Shawn Smith.

22 Q. And do you know on what basis Shawn Smith  
23 told you to pick him up?

24 A. From interviewing a co-defendant, Toya.

25 Q. Toya. Are you pretty sure of that?

1 A. Based on my recollection, I am.

2 Q. You're positive that it was based on  
3 conversation they had with Toya?

4 A. I was -- I have to review -- I didn't  
5 have a lot --

6 Q. You didn't review your records before you  
7 came in here today?

8 A. Very briefly.

9 Q. And you're testifying from what, two  
10 year's memory?

11 A. Yes.

12 Q. Do you know how many suspects were  
13 developed in this case?

14 A. We had a few. I don't know a number, no.

15 Q. What is a few?

16 A. I don't know a number.

17 Q. Weren't you involved in this case from  
18 day one, so-to-speak, say the 21st, until it was  
19 so-called completed, the investigation?

20 A. Yes.

21 Q. And didn't you have constant meetings  
22 with other detectives in this case?

23 A. To a point, yes, sir.

24 Q. Did y'all colloquy bear match over and  
25 over?

1 A. We did.

2 Q. And then you would return to  
3 headquarters; isn't that correct?

4 A. Yes.

5 Q. And then meet and converse about possible  
6 suspects?

7 A. That is correct.

8 Q. And would you say it's a number of, say,  
9 at least twenty suspects were developed?

10 A. If you have a number, you can tell --

11 Q. No, I don't have the number. You're the  
12 detective, so I'm asking you.

13 A. I don't know.

14 Q. You talked -- do you recall an interview  
15 with one person named Maxon?

16 A. Who.

17 Q. Devarious Maxon?

18 A. No.

19 Q. Do you remember an interview with one  
20 Felisha Davis?

21 A. No. I would have to read -- no.

22 Q. Do you recall any conversations that you  
23 had with any of your fellow detectives that where  
24 Felisha Davis implicated herself in this murder?

25 A. I don't know a name of a particular

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1 female. Are you referring to saying, did she say  
2 she was there?

3 MR. POWELL: Your Honor, we're going  
4 to object to this. Who said what to what  
5 detective, that's hearsay.

6 THE COURT: I'm going to sustain  
7 that objection. But you can ask your next  
8 question.

9 Q. Are you aware of Felisha -- are you aware  
10 of a female implicating herself in this murder?

11 A. Not by a name off my head. Through  
12 notes, yes.

13 Q. When you -- before you talked to  
14 David Watkins, you do what you call a  
15 pre-interview, right?

16 A. That's correct.

17 Q. How long does the pre-interview last?

18 A. It varies.

19 Q. But you basically inquire that individual  
20 of the same -- the substance of what you testified  
21 to what David -- or what was played on the tape,  
22 right?

23 A. Basically.

24 Q. You know what your answers are going to  
25 be before you put them on video?

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1 A. No.

2 Q. You don't?

3 A. No, I don't.

4 Q. Well, at some point you said in your  
5 interview on the tape, well, when did you kick him?  
6 Do you recall saying this to him?

7 A. Yes.

8 Q. Well, didn't you ask him about that prior  
9 to the video interview?

10 A. I'm sure I did, yes.

11 Q. So those are the things I'm talking  
12 about. Don't you ask what you consider to be  
13 pertinent questions --

14 A. Sure.

15 Q. -- before you do the video?

16 A. Yes.

17 Q. And you made sure, isn't it true, that  
18 you get your answers down before you put that  
19 person on video?

20 A. No.

21 Q. Did Mr. -- when you first interviewed  
22 Mr. Watkins, did Mr. Watkins tell you that he had  
23 been drinking and smoking?

24 A. I would have to refer to my notes. I  
25 don't recall.

EXHIBIT-2

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1 Q. You have to refer to your notes? How  
2 long did it take you --

3 A. My sups pertaining to this investigation.

4 Q. Pardon me?

5 A. My investigative sups.

6 Q. Now, you don't recall him telling you  
7 that he had been smoking and drinking?

8 A. No --

9 MR. KIDD: Judge, I'll object unless  
10 he can point to a specific time.

11 THE COURT: Yeah. Come up here. We  
12 can just take a break, if you need to.

13 (Bench conference was held.)

14 THE COURT: I don't know how long it  
15 will take him to review his notes, but if he needs  
16 to -- how long will it take you to look over your  
17 notes?

18 THE WITNESS: Without any  
19 disrespect, I know pertaining to my interview with  
20 him. I don't -- I don't know the answers to his  
21 questions as far as what he's looking at.

22 THE COURT: Then we better take  
23 about a ten-minute recess.

24 I'm going to give you a ten-minute break, and  
25 it will probably be the last one for the day.

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1 We'll get you in the jury assembly room. And every  
2 spectator needs to remain in the courtroom.

3 (Out of the presence of the jury.)

4 THE COURT: While you're reviewing  
5 your notes -- sir, right there, if you would just  
6 stay right where you are.

7 I don't know how I can make it clearer, that  
8 if you stay in this courtroom, you're not going to  
9 go to sleep. You're not going to be disrespectful.

10 And, Sir, what is your name?

11 SPECTATOR: Fred.

12 THE COURT: Well, you have been  
13 there sleeping it appears to me like; is that  
14 correct?

15 SPECTATOR: No, ma'am.

16 THE COURT: You've just been sitting  
17 there nodding. Well, if you cannot sit in the  
18 courtroom and sit up straight -- and tomorrow I  
19 want another deputy in here.

20 And, young lady, when you're back there, don't  
21 be -- it appears to be, again, you're sleeping  
22 during the first part when we came back, you had  
23 your head on the side of that bench. I'm not going  
24 to have anyone in this courtroom comport themselves  
25 in that manner. Anybody else that does, you're

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1 going to be excused and not be able to attend the  
2 rest of the trial. Is that clear? Okay.

3 (Brief recess was taken.)

4 (In the presence of the jury.)

5 THE COURT: Okay. We'll resume. I  
6 know you were not aware until today that you were  
7 selected for the jury. I would like to get through  
8 with the witness, but we won't keep you too late.  
9 Would anybody have to leave, if we had to stay just  
10 a few minutes after five?

11 (Jurors nod.)

12 THE COURT: Okay. Continue.

13 CROSS-EXAMINATION (CONTINUE)

14 BY MR. DURANT:

15 Q. Have you been able to review your  
16 records?

17 A. A little bit, yes, sir.

18 Q. And are you able to answer --

19 A. And the subject does not state that he  
20 was intoxicated or had beers at anytime.

21 Q. It doesn't state that?

22 A. I didn't see it, no.

23 Q. And you don't recall that that was the  
24 case?

25 A. No.



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1 Q. And let me ask you this. When you were  
2 giving him his miranda rights, you didn't detect  
3 that he might -- that he was impaired?

4 A. No.

5 Q. You didn't think anything was unusual  
6 about him?

7 A. Which time, sir?

8 Q. When he was giving the statement. When  
9 you were taking the statement from him.

10 A. Sure.

11 Q. You did not detect anything unusual about  
12 him?

13 A. Other than he was acting differently on  
14 the video opposed to the pre-interview.

15 Q. And what you mean acting differently?

16 A. His demeanor was different.

17 Q. And how was that?

18 A. As you saw on the tape.

19 Q. If -- were you concerned that he might  
20 not be understanding some of your questions?

21 A. No.

22 Q. At one point -- at one point in your  
23 interview you asked him if he was okay now; is this  
24 correct?

25 A. That's correct.

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1 Q. At what -- why did you ask him that?

2 A. Again, because of the way he was acting  
3 on the video.

4 Q. If you had to look at the video  
5 without -- if you had the benefit to look at the  
6 video without doing a pre-interview of him -- do  
7 you understand me?

8 A. I understand you.

9 Q. You had just the benefit of the video,  
10 would you consider that he was acting unusual?

11 A. That's not a fair question, because I got  
12 to see him before the video.

13 Q. Okay. Prior to -- prior to you putting  
14 him on video, did you tell him that you would help  
15 him out?

16 A. No.

17 Q. That is not something that officers say  
18 to defendants from time to time in pre-interviews,  
19 Listen, if you'll cooperate, I'll help you out.

20 A. No. What we do tell them -- what I can  
21 tell you from experience is what we do tell them is  
22 we don't have a decision in this matter.

23 Q. And that's -- that's all you tell him,  
24 You don't have a decision in this matter?

25 A. That's correct.

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1 Q. You didn't intimidate him in any manner?

2 A. No.

3 Q. You didn't threaten him?

4 A. No, sir.

5 Q. Were you able to ascertain that  
6 Mr. Watkins did not know Mr. Farrell, prior to  
7 that -- prior to the time -- prior to that evening?

8 A. I do not know if they had any type of  
9 relationship, whether be acquaintance or not, no,  
10 sir.

11 Q. You didn't ask him that in the  
12 pre-interview?

13 A. He, according to the interview, he did  
14 not know him.

15 Q. You said you got -- you got word from  
16 Shawn Smith to go pick Mr. Watkins up, right?

17 A. That is correct.

18 Q. When you -- when you went to pick  
19 Mr. Watkins up, isn't it normal police procedure --  
20 did you draw your weapon?

21 A. I don't recall if I did. It would be if  
22 it was a felony suspect wanted for murder, yes,  
23 sir, I would do it. And I have done it in the  
24 past.

25 Q. And do you recall whether you drew your

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1 weapon inside the house or outside of the house?

2 A. I would have it out prior to making entry  
3 into the residence, yes, I would. Therefore, if he  
4 was inside the house, which he was when we took him  
5 into custody, out of practice, it would be fair to  
6 say, yes, I had my weapon drawn.

7 Q. When you got into the house, wasn't  
8 Mr. Watkins on the telephone?

9 A. Yes, he was.

10 Q. And did you tell him to put the phone  
11 down and put the beer can down?

12 A. I don't recall that. I -- I recall  
13 telling him to get off the phone, yes. Whether  
14 there was a beer can or not, I don't recall.

15 Q. But if you saw him with a beer can and  
16 you took him to police headquarters, wouldn't it be  
17 prudent police procedure to ask him whether he's  
18 okay or whether he's been drinking or whether he's  
19 been smoking pot or whether he could answer your  
20 questions?

21 A. If I saw him with a beer can. It's not  
22 saying that I did see him with a beer can.

23 Q. But the fact that you don't recall  
24 doesn't mean that you didn't see it. You just  
25 don't recall?

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1           A.    Nor does it mean that I did see him with  
2   one.

3                   THE COURT:   Just answer his  
4   question.

5           A.    No, I don't recall.

6           Q.    Let me ask you.  Did you personally  
7   receive any unanimous calls during this  
8   investigation concerning who might be involved in  
9   this murder?

10          A.    I did not personally receive a call.

11          Q.    Do you know of anyone who received a  
12   call?

13          A.    Yes, I do.

14          Q.    And it was more than one; is that  
15   correct?

16          A.    I believe two.

17          Q.    But those calls did not implicate  
18   Mr. Watkins?

19          A.    At that time, no.

20          Q.    Did Mr. -- Mr. Watkins never admitted to  
21   you that he conspired to hurt Mr. Farrell, did he?

22          A.    No.

23          Q.    He never conceded to you that he shot  
24   Mr. Farrell, did he?

25          A.    No.

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1 Q. The only things -- the only things he  
2 conceded to, is it not, that he urinated on him and  
3 he kicked him four times; is that correct?

4 A. Yes, sir.

5 Q. I'm going to -- you said that you can't  
6 recall whether he was drinking or whether he said  
7 he was drinking or whether he was drunk, I'm going  
8 to show you what --

9 MR. DURANT: Judge, may I approach?

10 THE COURT: Sure.

11 Q. I'm going to show you what is called --  
12 what you know and what it says is an Alabama  
13 Uniform Arrest Report.

14 A. Okay. Under drinking, it says drinking.

15 Q. Yeah. And you prepared that report;  
16 isn't that true?

17 A. Yes, my name is on it.

18 Q. So he did, at least, tell you that he was  
19 drinking; isn't that correct?

20 A. I don't recall him telling me he was  
21 drinking.

22 Q. But it's in the report, is it not?

23 A. It's not saying that he's telling me he  
24 was drinking.

25 Q. But why would --

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1           A.    I don't know, as far as -- I don't know if  
2 I observed that he was drinking at the time or if  
3 he had been drinking or he told me he was drinking.

4           Q.    Well, who would make the notation that he  
5 was drinking?

6           A.    I would or whoever completes the arrest  
7 report.

8           Q.    So more than likely, you were the one  
9 that made that notation, right?

10          A.    Yes.

11               MR. DURANT: Judge, may I enter this  
12 into evidence?

13               MR. KIDD: May we look at it?

14               (Mr. Durant hands it to Mr. Kidd.)

15               MR. KIDD: Judge, I have an  
16 objection as to being hearsay.

17               THE COURT: Well, I'll take that up  
18 at the break. I'll just reserve ruling.

19               MR. DURANT: No further questions.

20               THE COURT: Anything else for this  
21 witness?

22               REDIRECT EXAMINATION

23               BY MR. POWELL:

24               Q.    Sergeant Loria, as this investigation  
25 proceeded to its conclusion, were you able to

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1 eliminate all other suspects except for this  
2 defendant, Latoya Davis, and Robert Watkins?

3 A. That is correct.

4 MR. POWELL: No further questions,  
5 Judge.

6 THE COURT: Okay. You can step  
7 down. You're excused -- can he --

8 MR. KIDD: He can be excused as far  
9 as the State is concerned, Your Honor.

10 THE COURT: Do you have a witness  
11 that may not take very long?

12 MR. KIDD: Judge, our next witness  
13 is quite lengthy.

14 THE COURT: I'm going to excuse you  
15 until tomorrow at nine. We'll get you in the jury  
16 assembly room at that time. And when you go home,  
17 if anybody ask you about the case, just say the  
18 Judge said I can't talk about it. We'll see you in  
19 the morning.

20 (Out of presence of the jury.)

21 THE COURT: Can I see that?

22 MR. KIDD: Judge, we don't have any  
23 objection.

24 THE COURT: Okay. Admitted.

25 (Defendant's Exhibit No. 1 was



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1 admitted into evidence.)

2 (Court adjourned for the afternoon.)

3 (Tuesday, May 15th, 2001, in the  
4 presence of the jury.)

5 THE COURT: Good morning. Okay.

6 Are you ready with your next witness?

7 MR. POWELL: Your Honor, the State  
8 calls Sergeant Ricky Huett.

9 THE COURT: And if you would raise  
10 your right hand, please.

11 WILLIAM R. HUETT

12 The witness, having first been duly sworn or  
13 affirmed to speak the truth, the whole truth, and  
14 nothing but the truth, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. POWELL:

17 Q. Good morning, Sergeant Huett. Could you  
18 state your name for the jury?

19 A. It's William R. Huett.

20 Q. And how are you employed?

21 A. I work for the Montgomery Police  
22 Department in the Crime Division of the Crime Scene  
23 Bureau.

24 Q. Now, how long have you been with the  
25 Montgomery Police Department?

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1. A. Since September of 1981.

2. Q. And what is your current capacity in the  
3. detective division in the crime scene bureau? What  
4. does that mean?

5. A. I'm a sergeant in what we call the crime  
6. scene bureau of the detective division, and,  
7. basically, we respond to crime scenes and process  
8. evidence for fingerprints. We photograph crime  
9. scenes.

10. Q. Are you also known as an evidence tech?

11. A. Yes, sir.

12. Q. So is it a fair statement to say that one  
13. of your primary roles on a crime scene is to  
14. collect evidence?

15. A. Yes, sir.

16. Q. And, generally, how are you qualified to  
17. do that? What training have you had in collecting  
18. evidence? Just briefly. You don't have to go into  
19. extensive detail. Just give us some idea the  
20. training the police department requires for you to  
21. hold that position.

22. A. Basically, your first training is  
23. on-the-job training where you ride with a senior  
24. officer for approximately three months, depending  
25. on the amount of training that you receive. And

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1 then, of course, you attend schools. And I've  
2 attended several local schools and two schools at  
3 the FBI Academy in Quantico in reference to the  
4 collection of evidence.

5 Q. Now, Sergeant Huett, I want to focus your  
6 attention on a crime scene that occurred back in  
7 October of 1999, that involved a victim by the name  
8 of John Christopher Farrell. Are you familiar with  
9 that crime scene?

10 A. Yes, sir.

11 Q. Were you the evidence tech on that crime  
12 scene?

13 A. Yes, sir.

14 Q. What all did -- just give us kind of an  
15 overview of everything you did on that crime scene,  
16 just real quick.

17 A. I photographed it. I collected evidence.  
18 I made a crime scene videotape, which basically is  
19 a video of the crime scene and the area surrounding  
20 it. And transported the evidence -- processed some  
21 evidence for fingerprints and transported the  
22 evidence to the forensic science.

23 Q. Now, let's start with the photographs.  
24 You actually took the photographs of the crime  
25 scene?

115

1 A. Yes, sir.

2 Q. And I'm also going to refer you to what's  
3 already been entered into evidence as State's 1,  
4 the crime scene video. Do you know who took this  
5 video?

6 A. Yes, sir.

7 Q. Who did?

8 A. I did.

9 Q. And whose voice is on this video?

10 A. Mine.

11 Q. Okay. So that was you that the jury  
12 heard when we played the video?

13 A. Yes, sir.

14 Q. And that was you working the camera?

15 A. Yes, sir.

16 Q. Okay. Now, I want to run through these  
17 photographs real quick with you, Sergeant Huett,  
18 and then we'll go to the computer monitor. I'm  
19 going to show you what's been marked as State's 14.  
20 Do you recognize that?

21 A. Yes, sir.

22 Q. What is it?

23 A. It's a picture of a cigar box.

24 Q. Now, did you find that on the crime  
25 scene?

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1 A. Yes, sir.

2 Q. Okay. Is that a fair and accurate copy  
3 of the picture of that cigar box?

4 A. Yes, sir.

5 MR. POWELL: We offer State's 14,  
6 Judge.

7 THE COURT: Admitted.

8 (State's Exhibit No. 14 was admitted  
9 into evidence.)

10 Q. I'm showing you what's now been marked as  
11 State's 16. Do you recognize that?

12 A. Yes, sir.

13 Q. Did you take that picture?

14 A. Yes, sir.

15 Q. Did you take State's 14?

16 A. Yes, sir.

17 Q. Now, going back to 16, what is that?

18 A. It's a shell casing in the water in the  
19 ditch.

20 Q. Okay. Is that a fair and accurate  
21 depiction of that shell casing where you found it  
22 on that day?

23 A. Yes, sir.

24 MR. POWELL: We offer State's 16,  
25 Judge.

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1 THE COURT: Admitted.

2 (State's Exhibit No. 16 was admitted  
3 into evidence.)

4 Q. Now, I'm showing you State's 18. Do you  
5 recognize that?

6 A. Yes, sir.

7 Q. What is it?

8 A. It's a picture of a cloth that had blood  
9 on it, a wooden block that was in the street of 600  
10 Block of Keystone.

11 Q. And that's a photograph of an area of  
12 this crime scene that we're talking about in this  
13 case today?

14 A. Yes, sir.

15 Q. Did you take that photograph?

16 A. Yes, sir.

17 Q. Is it a fair and accurate depiction of  
18 what you've just described?

19 A. Yes, sir.

20 MR. POWELL: We offer State's 18,  
21 Judge.

22 (State's Exhibit No. 18 was admitted  
23 into evidence.)

24 Q. Now, I'm showing you State's 21. What is  
25 that?

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1 A. This is the blood stain that is on the --  
2 still on Keystone Street -- no.

3 Q. Take a second there to compare it to your  
4 notes, if you need to, Sergeant. You took these  
5 photos back in '99?

6 A. Yes, sir.

7 Q. And you took several of them, didn't you?

8 A. Yes, sir.

9 Q. It's kind of hard to keep track of all  
10 that in your head, isn't it?

11 MR. DURANT: Objection, Judge.

12 THE COURT: Sustain. Don't make  
13 comments. Disregard that.

14 A. These are the stains on the ground in the  
15 600 Block of Keystone Street. There's the fence  
16 and the wooden block would be over in this area.

17 Q. You're talking about State's 21?

18 A. Yes.

19 Q. Is that a fair and accurate depiction of  
20 all that?

21 A. Yes, sir.

22 MR. POWELL: We offer State's 21,  
23 Judge.

24 THE COURT: Admitted.

25 (State's Exhibit No. 21 was admitted

119

1 into evidence.)

2 Q. And this is State's 22. Do you recognize  
3 that?

4 A. Yes, sir.

5 Q. What is it?

6 A. This is a picture of the blood on the  
7 roadway in the 600 Block of Keystone Street.

8 Q. Is that a fair and accurate picture of  
9 that bloodstain?

10 A. Yes, sir.

11 MR. POWELL: We offer 22, Judge.

12 THE COURT: Admitted.

13 (State's Exhibit No. 22 was admitted  
14 into evidence.)

15 Q. And this is State's 24. What is that?

16 A. This is a .380 caliber shell casing.

17 Q. Is it a fair and accurate depiction of  
18 that shell casing you recovered?

19 A. Yes, sir.

20 MR. POWELL: We offer State's 24,  
21 Judge.

22 THE COURT: Admitted.

23 (State's Exhibit No. 24 was admitted  
24 into evidence.)

25 Q. And all of these photographs that we just



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1 made reference to, you actually took all of those;  
2 is that correct?

3 A. Yes, sir.

4 Q. Okay. Now, Sergeant Huett, I'm going to  
5 refer you to this photograph on the overhead  
6 projector. It's already been admitted as State's  
7 Exhibit 2. Do you recognize that scene?

8 A. Yes, sir.

9 Q. What is it?

10 A. This is an aerial view of the scene at  
11 the dead end of Keystone Street where the railroad  
12 tracks run across the ditch and as Keystone goes up  
13 toward Day Street.

14 Q. Now, I'm going to show you what we  
15 offered as State's 42, I believe. Do you recognize  
16 this kind of graphical depiction of the photograph?

17 A. Yes, sir.

18 Q. Okay. Now, on this, could you point out  
19 for the jury -- and you can use this. Just hit  
20 that button right there. Could you point out for  
21 the jury where the residence at 659 Keystone is  
22 located?

23 A. It's right there.

24 Q. Did you find some evidence in front of  
25 that residence?

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1 A. I photographed the bloodstain on the  
2 ground on the roadway.

3 Q. Now, this photograph right here, we just  
4 offered as State's Exhibit 22. Is that the  
5 bloodstain that you're referring to?

6 A. Yes, sir.

7 Q. Okay. Now, that diagram has an arrow and  
8 a circle. Is that the location where you found  
9 that bloodstain?

10 A. Yes, sir, that would be approximately it.

11 Q. Now, what's that a photograph of?

12 A. That's a photograph of a cloth.

13 Q. Could you use the pointer there and show  
14 the jury the cloth you're referring to?

15 A. Right here.

16 Q. You're using the pointer now to point to  
17 what's been marked and admitted as State's 18.

18 A. This was the cloth.

19 Q. Now, was that cloth significant to you?

20 A. Yes, sir.

21 Q. Why?

22 A. It had blood on it.

23 Q. Now, how long have you been an evidence  
24 tech?

25 A. Since August of '87.

122

1 Q. Have you processed blood at a crime scene  
2 before?

3 A. Yes, sir.

4 Q. How many times?

5 A. I don't know. It's a large number.

6 Q. So you've seen blood before?

7 A. Yes.

8 Q. And you're telling the jury -- is that  
9 blood on that rag to your knowledge?

10 A. Yes, sir.

11 Q. Now, what else does that photograph in  
12 State's 18 show us?

13 A. It also shows a wooden block right here.

14 Q. Is there any other evidence that you can  
15 show the jury in State's 18?

16 A. No, sir.

17 Q. Now, we're showing you what's been  
18 admitted as State's 3. What's that a photograph  
19 of?

20 A. That's a picture of the victim.

21 Q. Does that circle and arrow correctly  
22 indicate where the victim was found on the diagram?

23 A. Yes, sir.

24 Q. And that's the position you observed the  
25 victim in?

123

1 A. Yes, sir.

2 Q. Now, Sergeant Huett, I want you to take a  
3 second and look at all three of these photographs.  
4 That's basically our overall crime scene right  
5 there. There's a couple things that we haven't put  
6 in yet. But the general area is on Keystone Street  
7 where you collected most of your evidence; is that  
8 a fair statement?

9 A. Yes, sir.

10 Q. Now, we've got -- what is that?

11 A. That's the stain in front of 659 Keystone  
12 Street in the roadway.

13 Q. And that photograph?

14 A. And that indicates the cloth and the  
15 wooden block over in front of 668 Keystone.

16 Q. Now, I want to use this photograph for a  
17 second and refer to the diagram behind it. Now,  
18 were these items that you collected found directly  
19 across from each other?

20 A. I'm not sure. I don't remember.

21 Q. You don't remember for sure?

22 A. No.

23 Q. But do those circles indicate the  
24 approximate location where you found those?

25 A. Yes, sir.

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1 Q. But you do know they were found in the  
2 same vicinity?

3 A. Yes, sir.

4 Q. In between those two residences you just  
5 made reference to?

6 A. Yes, sir. I just don't remember if they  
7 were straight across from each other.

8 Q. Okay. Now, what -- we've put State's 24  
9 on the board there down in the lower left-hand  
10 corner. What's that a photograph of -- let me show  
11 you State's 24 close up so you can see.

12 A. This is a photograph of the .380 caliber  
13 casing.

14 Q. Okay. Is that the casing you're  
15 referring to?

16 A. Yes, sir.

17 Q. Okay. Now, where was that casing found?

18 A. It was on Knox Street.

19 Q. About what vicinity of Knox Street? Can  
20 you remember?

21 A. It was approximately half way down the  
22 street from Keystone until the next street --

23 Q. Okay.

24 A. -- which would be -- approximately in  
25 that area.

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1 Q. There's an arrow depicting Knox Street.  
2 Is that arrow a fair and accurate depiction of  
3 where you found that shell casing?

4 A. Yes, sir.

5 Q. Now, I want to refer you to the area  
6 that's indicated in that large oval. What is that  
7 area?

8 A. That's -- it holds where the victim was  
9 located at the bottom. Two piles of dirt at the  
10 end -- at the dead end of Keystone Street, then  
11 goes up to the intersection of Keystone and Knox.

12 Q. Now, is that a photograph of -- the  
13 actual photograph of those dirt pounds that we were  
14 talking about?

15 A. Yes.

16 Q. Okay. Now, did you recover any physical  
17 evidence from the area of that dirt mound there?

18 A. Yes, sir.

19 Q. What was that?

20 A. A cigar box.

21 Q. Now, I'm showing you what's already been  
22 admitted as State's 14. Is that the cigar box  
23 you're referring to?

24 A. Yes, sir.

25 Q. Is that the area where you recovered the

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1 cigar box from that dirt mound?

2 A. Yes, sir.

3 Q. Okay. Now, do you have some physical  
4 evidence with you, Sergeant Huett?

5 A. Yes, sir.

6 Q. Could you produce that cigar box for us?

7 A. (Witness complies.)

8 Q. Okay. You just got a small bag out of a  
9 large bag. What was the impound number on the  
10 large bag?

11 A. 189357.

12 Q. Now, before coming to court today, was  
13 that bag sealed and closed?

14 A. Yes, sir.

15 Q. And who opened the seal on that bag?

16 A. I did.

17 Q. Okay. Now, what bag did you take out of  
18 there?

19 A. I took the bag labeled R-3.

20 Q. Okay. Now, we're going to mark the  
21 overall impound -- withdraw that. Keep going,  
22 Sergeant Huett. Okay. From the bag R-3, what have  
23 you produced?

24 A. Middleton's Black and Mild Cigar Box.

25 Q. Sergeant, I'm going to mark these

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1 State's 15. Now, is this the same cigar box that's  
2 depicted in that photograph that you recovered from  
3 the crime scene?

4 A. Yes, sir.

5 MR. POWELL: Your Honor, we offer  
6 State's 15 at this time.

7 THE COURT: Admitted.

8 (State's Exhibit No. 15 was admitted  
9 into evidence.)

10 Q. Now, did you do anything to that cigar  
11 box other than collect it?

12 A. Yes, sir.

13 Q. What?

14 A. I processed it for fingerprints.

15 Q. Did your processing of that cigar box for  
16 fingerprints reveal anything?

17 A. No, sir.

18 Q. What does that mean?

19 A. It means there was no fingerprint -- we  
20 call it ridge detail present on the box.

21 Q. You call it what?

22 A. Ridge detail.

23 Q. Ridge detail?

24 A. Yes, sir.

25 Q. What's that referring to?



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1 A. It's referring to what is called friction  
2 of the skin, which is on the tips of your fingers.

3 Q. So that box didn't tell you anything as  
4 far as fingerprints go?

5 A. Yes, sir.

6 Q. Okay. Now, I'm referring to a photograph  
7 on our overhead that's already been admitted as  
8 State's 3. Did you take that photograph?

9 A. Yes, sir.

10 Q. And does that depict the way y'all found  
11 Mr. Farrell's body in that ditch that day?

12 A. Yes, sir.

13 Q. Is that a close-up of the same body?

14 A. Yes, sir.

15 Q. Now, what's the white there located, kind  
16 of the area of his pants?

17 A. It's where his pockets have been turned  
18 inside out.

19 Q. Is that another angle of the body?

20 A. Yes, sir.

21 Q. Now, I want to go and talk to you about  
22 what we admitted as State's 16. Is that a  
23 photograph of State's 16?

24 A. Yes, sir.

25 Q. What is that?

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1 A. It's a .22 caliber shell casing.

2 Q. Now, do you have that .22 caliber shell  
3 casing in your possession?

4 A. Yes, sir.

5 Q. Okay. Before we get to that, let's go  
6 back one step. How do you know it was a .22  
7 caliber shell casing?

8 A. When I picked it up, I looked at it.

9 Q. Did it say that on there?

10 A. I thought it did.

11 Q. Okay. Well, let's look at it. Just for  
12 the Record, Sergeant, can you read the impound  
13 number of that package you're opening right there?

14 A. 189357.

15 Q. And the -- what's the smaller package  
16 you're opening from that?

17 A. It's labeled R-1.

18 Q. Okay. And just for the Record is R-1  
19 still sealed at this time?

20 A. Yes, sir.

21 Q. And in order to open that, you're having  
22 to break the seal on that package; is that correct?

23 A. Yes, sir. Do you have a knife?

24 Q. I don't have one. I'm a bad lawyer. <sup>1P</sup>

25 Okay. Now, what have you produced out of R-1

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1 there? What are you holding in your hand?

2 A. Shell casing.

3 Q. Now, is that the same shell casing that's  
4 depicted in this photograph here that was recovered  
5 next to the victim's body?

6 A. Yes, sir.

7 MR. POWELL: Your Honor, at this  
8 time, we would like to mark this shell casing as  
9 State's 17 and offer it.

10 THE COURT: Okay. Admitted.

11 (State's Exhibit No. 17 was admitted  
12 into evidence.)

13 Q. Now, take a second, Sergeant Huett, and  
14 look at that shell casing for me?

15 A. (Witness complies.)

16 Q. Does it indicate to you that's it's a .22  
17 caliber shell casing?

18 A. No, sir.

19 Q. How long have you been working around  
20 bullets and things like that?

21 A. Since August of 1987.

22 Q. And you've seen shell casings similar to  
23 that before?

24 A. Yes, sir.

25 Q. And in your training and experience with

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1 the Montgomery Police Department, what kind of  
2 shell casing is that?

3 A. A .22 caliber.

4 Q. Now, there's an arrow from the shell  
5 casing to an area of the body, does that fairly and  
6 accurately reflect where you recovered that shell  
7 casing from?

8 A. Yes, sir.

9 Q. Okay. Now, how close -- or what's your  
10 best judgment of how close that shell casing was to  
11 the victim's body?

12 A. If I remember correctly, it was  
13 approximately between one and two feet.

14 Q. A couple feet?

15 A. Yes, sir.

16 Q. Okay. Now, from your examination of that  
17 shell casing right there, can you tell what type of  
18 weapon it was fired from?

19 A. The brand?

20 Q. Not anything specific. Just pistol,  
21 revolver or anything --

22 A. No, sir.

23 Q. No, you can't?

24 A. No, sir.

25 Q. Okay. Now, what's that a photograph of?

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1           A.    It's a photograph of the injuries to the  
2 victim's head.

3           Q.    Okay. How many injuries did you  
4 personally observe on the victim's head?

5           A.    Two.

6           Q.    Do you still have that remote control,  
7 Sergeant?

8           A.    Yes, sir.

9           Q.    Using that laser pointer, point out the  
10 two injuries you're referring to.

11          A.    One is here. And the other is here.

12          Q.    Now, could you tell whether or not one of  
13 those injuries was a gunshot wound?

14          A.    No, sir.

15          Q.    So from your training and experience, you  
16 can't really tell us anything about the nature of  
17 those two injuries?

18          A.    They appear to be a gunshot wound.

19          Q.    That's fine, Sergeant. But that's one of  
20 the injuries where the arrow is indicating?

21          A.    Yes, sir.

22          Q.    And that's the other one. Now, do both  
23 of those appear to be gunshot wounds to you or --

24          A.    Yes, sir.

25          Q.    To you, they both look like gunshot

1 wounds?

2 A. Yes, sir.

3 Q. Now, Sergeant Huett, when we made  
4 reference, I believe it was in State's 23 or 24, to  
5 a .380 caliber shell casing, do you have that shell  
6 casing in your possession?

7 A. Yes, sir.

8 Q. Could you get that out for us?

9 A. (Witness complies.)

10 MR. DURANT: Judge, may we approach?

11 THE COURT: Sure.

12 (Bench conference was held.)

13 Q. Now, do you have -- what did you pull out  
14 of the bag there?

15 A. This is a .380 caliber shell casing.

16 Q. And is that the same shell casing that  
17 was in the photograph that you collected from Knox  
18 Street over at the crime scene?

19 A. Yes, sir.

20 Q. And you were the one that collected that  
21 shell casing?

22 A. Yes, sir.

23 Q. Is that the exact same shell casing that  
24 you collected from the crime scene?

25 A. Yes, sir.

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1 Q. And is it in the same or substantially  
2 the same condition as it was the day you collected  
3 it?

4 A. Yes, sir.

5 MR. POWELL: I'm going to mark that  
6 as State's 24 and offer it at this time.

7 THE COURT REPORTER: I have you down  
8 for a 24 already.

9 MR. POWELL: Well, 24A.  
10 (State's Exhibit No. 24A was  
11 admitted into evidence.)

12 Q. Now, Sergeant Huett, we've been over the  
13 blood and the other physical evidence you collected  
14 from that crime scene. Did you collect any other  
15 physical evidence on that day from that particular  
16 crime scene aside from photographs? I'm not  
17 talking about photographs.

18 A. Yes, sir, I collected a blue nylon  
19 jacket.

20 Q. You're talking about clothing of the  
21 victim at this point?

22 A. It was actually up under the victim. And  
23 that cloth that was referred to.

24 Q. Now --

25 A. And I also collected a sample from the

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1 bloodstain in the street near the 600 block of  
2 Keystone Street.

3 Q. Now -- and we've seen photographs of the  
4 locations of all this physical evidence that you  
5 collected at this time?

6 A. Yes, sir.

7 MR. POWELL: Thank you.

8 CROSS-EXAMINATION

9 BY MR. DURANT:

10 Q. Sergeant Huett, you did testify, did you  
11 not, that no fingerprints were -- you were not able  
12 to lift any prints from any of the evidence that  
13 you collected; is that correct?

14 A. Yes, sir.

15 Q. You were not able to lift any prints that  
16 would show that's the prints of David Watkins,  
17 would you?

18 A. No, sir, I was not able to lift any  
19 fingerprints.

20 Q. And the blood that you were able -- you  
21 collected blood samples, right, from Keystone  
22 Street?

23 A. Yes, sir.

24 Q. And were you able to determine whose  
25 blood that was?



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1 A. I submitted it to the Department of  
2 Forensic Sciences, and I'm unaware of the results.

3 Q. And you are aware -- you just testified  
4 on direct that you could observe -- from your  
5 training, you could observe two gunshots in the  
6 head of Mr. Farrell; is that correct, that it  
7 appeared to be gunshot wounds?

8 A. Yes, sir. The two injuries appeared to  
9 be a gunshot wounds.

10 Q. And you were only able to -- you were  
11 only able to recover one shell casing -- a .22  
12 shell casing; is that correct?

13 A. I recovered a .22 caliber shell casing  
14 beside the victim and the .380 caliber casing up on  
15 Knox Street.

16 Q. How far is Knox Street from where the  
17 victim was ultimately found?

18 A. It -- I would guess a couple hundred  
19 yards?

20 Q. A couple of hundred yards?

21 A. Yes, sir.

22 Q. Were you able to determine whether a .380  
23 caliber weapon was used in this -- in this murder?

24 A. No, sir.

25 Q. Is it -- in your experience, is it

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1 unusual in canvassing an area -- and, obviously,  
2 you canvas a wide area -- in canvassing an area, is  
3 it unusual to find paraphernalia that might  
4 seemingly relate to a crime, but, in fact, is not?  
5 Do you understand my question?

6 A. It happens. What your question is: Do  
7 we find things that are unrelated? Yes, sir.

8 Q. Okay. So what you do is just, whatever  
9 is in your view -- as far as the -- particularly in  
10 your concern -- whatever is in your view, you'll  
11 collect because you don't know what it's about?

12 A. Yes, sir.

13 Q. And are you -- are you aware -- are you  
14 aware -- are you aware that this is a high crime  
15 area?

16 A. No, sir.

17 Q. Are you aware that there is gun fire  
18 frequently in this particular area?

19 A. Yes, sir.

20 Q. So it's nothing unusual for you to have  
21 recovered a .380 caliber casing, is it?

22 A. Yes, sir, I would think you would find  
23 something.

24 Q. You'll think that you would find  
25 something?

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1 A. Yes, sir.

2 Q. And going back to your -- your -- your  
3 responsibilities mainly are just to collect  
4 evidence?

5 A. Yes, sir.

6 Q. And it's probably somebody else's  
7 responsibility to make a determination as to  
8 whether -- as to what that evidence is, whether it  
9 contains this person's blood or that person's  
10 blood; is that correct?

11 A. Yes, sir.

12 Q. And as far as you know, nothing that you  
13 collected had any relationship to  
14 Mr. David Watkins, as far as you know?

15 A. I collected some oral swabs that I got  
16 that were supposed to be identified to be from  
17 Mr. Watkins.

18 Q. Okay. Some oral swabs?

19 A. Yes, sir.

20 Q. Of Mr. Watkins?

21 A. No, sir. I got them from supply.

22 Q. Okay. But they were taken from  
23 Mr. Watkins?

24 A. To my knowledge, yes, sir; they were.

25 Q. Okay. As far as you know -- as far as

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1 you know, there is nothing that -- strike that. As  
2 far as the cloth and the blood is concerned, you  
3 said you found that across the street?

4 A. I found it in the street near 668  
5 Keystone.

6 Q. And that's the house across the street, I  
7 take it?

8 A. It was across from 659, yes, sir.

9 Q. Okay. And you don't know what -- what --  
10 whose blood that was? Do you know?

11 A. No, sir.

12 Q. But, again, in terms of -- in terms of  
13 collecting evidence, it's nothing unusual to find  
14 that kind of paraphernalia around the streets; is  
15 that correct?

16 A. It's unusual to find a bloody cloth in  
17 the street, yes, sir.

18 Q. A bloody cloth?

19 A. Yes, sir.

20 Q. And you only found one bullet at the --  
21 with the body; is that correct?

22 A. One shell.

23 Q. One shell, I should say?

24 A. Casing, yes, sir.

25 MR. DURANT: That's all.

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1 MR. POWELL: Briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. POWELL:

4 Q. Sergeant Huett, Mr. Durant just asked you  
5 about the shell casings. I want to ask you this.  
6 Did they ever recover any type of weapon in this  
7 case?

8 A. Not to my knowledge, no, sir.

9 Q. In your experience, would you need the  
10 weapon to do any type of ballistic testing to  
11 compare and match any kind of bullets to a gun?

12 A. Yes, sir.

13 Q. Was that possible in this case without a  
14 weapon?

15 A. Without a weapon, it would not be  
16 possible.

17 Q. Okay. Now, let's talk about those  
18 injuries to his head for a second. Now, you say,  
19 in your opinion, they look to you like gunshots; is  
20 that right?

21 A. From my opinion, they appeared to be from  
22 a gun.

23 Q. Okay.

24 A. Whether one is entrance and one is exit,  
25 I don't know or if they're two separate wounds.

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1 Q. Now, from your training and experience,  
2 would you consider that opinion to be absolutely  
3 conclusive as to the nature or type of these  
4 wounds?

5 MR. DURANT: Objection.

6 A. No.

7 THE COURT: I didn't hear all of the  
8 question.

9 MR. POWELL: I'll rephrase it, Your  
10 Honor.

11 Q. Now, are you -- in you -- are you for  
12 certain -- let me rephrase it. How certain are you  
13 that both of those injuries were gunshots?

14 MR. DURANT: Objection.

15 THE COURT: Sustained.

16 Q. Now, let's talk about those fingerprints.  
17 You didn't get any lifts off that box?

18 A. Yes, sir -- no, sir, I didn't get any  
19 lifts.

20 Q. What are some reasons why you wouldn't  
21 get fingerprint lifts off a box like you found?

22 MR. DURANT: Objection.

23 THE COURT: That's a rather broad  
24 question. Let's focus on that case.

25 Q. Sergeant, I want to refer to that

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1 specific cigar box that we admitted into evidence.  
2 Do you have any reasons why you would have been  
3 unable to obtain fingerprints off of that piece of  
4 evidence?

5 A. First thing is, is depending on the way  
6 the person touched the cigar box originally. And  
7 then with the amount of pressure that was applied,  
8 what type of fingerprint --

9 MR. DURANT: Objection.

10 THE COURT: I'm going to sustain the  
11 objection. Just state your question again and  
12 don't go any further than necessary to answer it.

13 Q. So one reason would be the way they  
14 touched the box?

15 A. Yes, sir.

16 Q. Are there any other reasons?

17 A. The material the box is made out of.

18 Q. What material is it made out of?

19 A. It's made out of a light paper.

20 Q. And why would that have anything to do  
21 with whether it takes a fingerprint or not?

22 A. Because smooth surfaces tend to -- you  
23 tend to leave fingerprints on them more readily. A  
24 surface that's indented or pushes down or something  
25 is not as readily to leave a fingerprint on.

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1 Q. So which kind of surface is that cigar  
2 box?

3 A. It's one that's light that you don't have  
4 to put a lot of pressure on it.

5 Q. Are there any other reasons why a  
6 fingerprint might not take on that cigar box?

7 MR. DURANT: Judge, I object to this  
8 line of questioning.

9 MR. POWELL: We'll move on, Your  
10 Honor.

11 Q. Now, Sergeant Huett, can you say with any  
12 degree of medical certainty --

13 MR. DURANT: Objection.

14 THE COURT: Sustained.

15 MR. POWELL: We don't have anything  
16 further, Judge.

17 THE COURT: Okay. You can step  
18 down.

19 MR. KIDD: Judge, may this witness  
20 be excused?

21 THE COURT: Yes.

22 (Witness excused.)

23 MR. KIDD: Judge, if I can just take  
24 one second?

25 THE COURT: And if you would raise



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1 your right hand, please?

2 JAMES SPARROW

3 The witness, having first been duly sworn or  
4 affirmed to speak the truth, the whole truth, and  
5 nothing but the truth, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. KIDD:

8 Q. Sir, if you would, state your name for  
9 the ladies and gentlemen of the jury?

10 A. James Presley Sparrow.

11 Q. Mr. Sparrow, how are you currently  
12 employed?

13 A. I'm employed as a Forensic Investigator  
14 with the Alabama Department of Forensic Sciences.

15 Q. I think there's been a lot of television  
16 shows and that sort of thing on forensic  
17 investigators. Basically, just in layman terms,  
18 tell us, on an everyday basis, what you do for the  
19 State?

20 A. Our department in Montgomery, I work for  
21 the state medical examiner's office. We're request  
22 for service agency and death investigations in  
23 Montgomery County and seventeen other counties, we  
24 respond and to assist local authorities in  
25 investigating a scene.

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1 Q. So, basically, you cover a  
2 seventeen-county geographical area here in Alabama?

3 A. That's correct.

4 Q. And when you go out to crime scenes,  
5 specifically, what do you do?

6 A. I'm associated primarily with death  
7 investigations. My primary purpose is that of the  
8 deceased and surrounding area of the deceased.

9 Q. And, Mr. Sparrow, I'm going to direct  
10 your attention to October 19th, 1999, were you  
11 called to an area here in Montgomery for crime  
12 scene investigation?

13 A. Yes, sir, I was.

14 Q. And did you take custody of a body of a  
15 Mr. Jonathan Farrell?

16 A. Yes, sir, I did.

17 Q. And after you took custody of that body,  
18 what did you do with it?

19 A. From the scene, I transported the body to  
20 our facility in Montgomery.

21 Q. And when you took possession of that body  
22 and delivered it to the morgue, was it in the same  
23 or substantially the same condition as it was when  
24 you found the body?

25 A. Yes, sir, it was.

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1 MR. KIDD: Judge, I have no further  
2 questions.

3 THE COURT: Any questions of him?

4 MR. DURANT: No questions.

5 THE COURT: And you are excused.

6 (Witness excused.)

7 THE COURT: Your next witness -- I  
8 think this witness may take a little while, so  
9 let's have a fifteen-minute recess, and then  
10 we'll -- he can set up in the meantime. We'll get  
11 you in the -- you know by now, we'll get you in the  
12 jury assembly room.

13 (Brief recess was taken.)

14 (In the presence of the jury.)

15 THE COURT: I don't think I've sworn  
16 you in. I'm going to do that now.

17 JAMES LAURIDSON

18 The witness, having first been duly sworn or  
19 affirmed to speak the truth, the whole truth, and  
20 nothing but the truth, testified as follows:

21 MR. KIDD: Your Honor, the State  
22 calls James Lauridson.

23 THE COURT: And I swore him in, as  
24 some of you saw.

25 DIRECT EXAMINATION

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1 BY MR. KIDD:

2 Q. Dr. Lauridson, if you would take a moment  
3 to introduce yourself to the ladies and gentleman  
4 of the jury.

5 A. I'm James Lauridson.

6 Q. Dr. Lauridson, how are you currently  
7 employed?

8 A. I'm currently employed by the Office of  
9 Prosecution Services.

10 Q. And what is your capacity of employment  
11 with OPS?

12 A. I'm -- my job title is director of  
13 graphics. That means that I'm preparing graphics  
14 for trial presentations.

15 Q. And how long have you been doing that for  
16 OPS?

17 A. I've been doing it part time since  
18 October and full-time since the last month.

19 Q. And so this is basically a new job for  
20 you?

21 A. It is, yes.

22 Q. Prior to your current position, how were  
23 you employed?

24 A. I was a medical examiner for the Alabama  
25 Department of Forensic Sciences.

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1 Q. So, Dr. Lauridson, just in layman terms,  
2 what is a medical examiner?

3 A. A medical examiner is a physician who has  
4 specialty training in forensic pathology. The job  
5 of the medical examiner is to examine the bodies of  
6 persons who have died under certain circumstances  
7 and to establish a cause and manner of death in  
8 those cases.

9 Q. And, Dr. Lauridson, you just made a  
10 reference to types of training. What type of  
11 training and education do you have to qualify you  
12 as a medical examiner?

13 A. I have a degree in medicine from the  
14 University of Colorado. I am specialty trained in  
15 board certification in internal medicine and  
16 anatomic pathology and forensic pathology.

17 Q. Dr. Lauridson, how long have you worked  
18 as a medical examiner?

19 A. Approximately fifteen years.

20 Q. And during your last year with the  
21 Alabama Department of Forensic Sciences,  
22 approximately, how many autopsies did you do that  
23 single year?

24 A. Between two hundred and fifteen and three  
25 hundred.

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1 Q. Would it be fair to say -- would it be  
2 possible for you to say how many autopsies you've  
3 done over your fifteen-year career?

4 A. My estimate is about three thousand, five  
5 hundred.

6 Q. Okay. Dr. Lauridson, I'm going to direct  
7 your attention first to what we have already  
8 referenced as State's Exhibit No. 42. Give you a  
9 second to familiarize yourself with this  
10 photograph. Can you identify that?

11 A. Yes, I can.

12 Q. And what is this?

13 A. This is a graphic that I created that is  
14 a scale graphic that represents the scene of the  
15 crime.

16 Q. And how were you able to make that a  
17 scale representation?

18 A. This was made from an aerial photograph  
19 that was prepared by the city, so that all of the  
20 streets and the houses could be exactly located.  
21 And I used that aerial photograph to position these  
22 houses.

23 Q. And have you referenced a scale on  
24 State's Exhibit No. 42?

25 A. I have, yes.

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1 Q. Okay.

2 MR. KIDD: Your Honor, we offer  
3 State's 42 at this time.

4 THE COURT: Admitted.

5 (State's Exhibit No. 42 was admitted  
6 into evidence.)

7 Q. Dr. Lauridson, what I would like to do  
8 now is give you a series of paragraphs and see if  
9 you can identify these photographs for me. I'm  
10 going to show you what I've marked as State's  
11 Exhibit No. 26. Can you identify State's 26,  
12 please?

13 A. Yes, this is a photograph of a person who  
14 is, eventually, identified to me, as John Farrell.

15 Q. Okay. And is that prior to coming to the  
16 morgue?

17 A. It is, yes.

18 MR. KIDD: Your Honor, we offer  
19 State's 26 at this time.

20 THE COURT: Admitted.

21 (State's Exhibit No. 26 was admitted  
22 into evidence.)

23 Q. Dr. Lauridson, if you would, take a look  
24 at State's 27. Can you identify State's 27?

25 A. Yes, this is a photograph that I took at





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1 the beginning of my examination of M. Farrell's  
2 body.

3 Q. Dr. Lauridson, we offer -- or excuse me?

4 MR. KIDD: Judge, we offer State's  
5 27.

6 THE COURT: Admitted.

7 (State's Exhibit No. 27 was admitted  
8 into evidence.)

9 Q. I'm going to show you State's 28. Can  
10 you identify State's 28?

11 A. Yes, this is also a photograph that I  
12 took during the examination.

13 Q. What does that represent?

14 A. It shows the face of Mr. Farrell.

15 MR. KIDD: Your Honor, we offer  
16 State's 28 at this time.

17 THE COURT: Admitted.

18 (State's Exhibit No. 28 was admitted  
19 into evidence.)

20 Q. Dr. Lauridson, I show you State's 29.  
21 Can you identify State's 29, please?

22 A. Yes, this is a photograph showing the  
23 left side of the face of Mr. Farrell.

24 MR. KIDD: Your Honor, we offer  
25 State's 29.

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1 THE COURT: Admitted.

2 (State's Exhibit No. 29 was admitted  
3 into evidence.)

4 Q. Dr. Lauridson, I show you State's 30.  
5 Can you identify State's 30 for me, please?

6 A. Yes, this is a photograph that I also  
7 took during the examination showing a wound of the  
8 left cheek of Mr. Farrell.

9 Q. Dr. Lauridson, I show you State's 31.

10 MR. KIDD: We offer State's 30, Your  
11 Honor.

12 THE COURT: Admitted.

13 (State's Exhibit No. 30 was admitted  
14 into evidence.)

15 A. 31 is a photograph that I took of the  
16 same wound, this being the close-up of this wound.

17 MR. KIDD: Your Honor, we offer  
18 State's 31.

19 THE COURT: Admitted.

20 (State's Exhibit No. 31 was admitted  
21 into evidence.)

22 Q. Dr. Lauridson, would you look at State's  
23 Exhibit 32? Can you identify State's 32?

24 A. Yes, this is a photograph of an x-ray  
25 that I took during postmortem examination of

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1 Mr. Farrell's head.

2 MR. KIDD: Your Honor, we offer  
3 State's 32.

4 Q. Dr. Lauridson, look at State's 33. Can  
5 you identify that for me?

6 A. This is a close-up photograph of the  
7 bullet that I recovered from Mr. Farrell's head  
8 that I took during the postmortem.

9 MR. KIDD: Your Honor, we offer  
10 State's 33.

11 THE COURT: Both of the last ones  
12 are admitted.

13 (State's Exhibits No. 32 and 33 were  
14 admitted into evidence.)

15 Q. Dr. Lauridson, if you'll take a look at  
16 State's 34. Can you identify that for me, please?

17 A. 34 is a photograph that I took of the  
18 bullet that I recovered from Mr. Farrell's head  
19 and -- (inaudible.)

20 MR. KIDD: Your Honor, we offer  
21 State's 34.

22 THE COURT: Admitted.

23 (State's Exhibit No. 34 was admitted  
24 into evidence.)

25 Q. Dr. Lauridson, if you will look at

1 State's 35. Can you identify that, please?

2 A. Yes, this is a photograph that I took  
3 from Mr. Farrell's head -- the back of the head,  
4 which shows a separate wound to the back of his  
5 head.

6 MR. KIDD: Your Honor, we offer  
7 State's 35.

8 THE COURT: Admitted.

9 (State's Exhibit No. 35 was admitted  
10 into evidence.)

11 Q. Dr. Lauridson, if you will take a look at  
12 State's 36. Can you identify that?

13 A. Yes, this is a photograph of  
14 Mr. Farrell's left wrist that I took.

15 MR. KIDD: Your Honor, we offer  
16 State's 36.

17 THE COURT: Admitted.

18 (State's Exhibit No. 36 was admitted  
19 into evidence.)

20 Q. Dr. Lauridson, can you look at State's  
21 37?

22 A. This is another photograph that I took of  
23 the left hand.

24 MR. KIDD: Your Honor, we offer  
25 State's 37.

1 THE COURT: Admitted.

2 (State's Exhibit No. 37 was admitted  
3 into evidence.)

4 Q. Dr. Lauridson, will you look at State's  
5 38? Can you identify that for me, please?

6 A. Yes, this is a photograph that I took of  
7 the left side of Mr. Farrell's elbow.

8 MR. KIDD: Your Honor, we offer  
9 State's 38.

10 THE COURT: Admitted.

11 (State's Exhibit No. 38 was admitted  
12 into evidence.)

13 Q. Dr. Lauridson, would you look at State's  
14 39 for me, please?

15 A. This is a photograph of Mr. Farrell's  
16 left knee.

17 MR. KIDD: Your Honor, we offer  
18 State's 39.

19 THE COURT: Admitted.

20 (State's Exhibit No. 39 was admitted  
21 into evidence.)

22 Q. And finally, Dr. Lauridson, can you look  
23 at State's 40?

24 A. Yes, this is also a photograph that I  
25 took showing an abrasion on the left side of

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1 Mr. Farrell's abdomen.

2 MR. KIDD: Your Honor, we offer  
3 State's 40.

4 THE COURT: Admitted.

5 (State's Exhibit No. 40 was admitted  
6 into evidence.)

7 Q. Dr. Lauridson, when you received  
8 Mr. Farrell's body into your possession, what was  
9 the first thing that you would do in order to  
10 prepare that body for an autopsy?

11 A. First thing I do in preparation for the  
12 autopsy itself is to do an overall photograph of  
13 the body with clothing and any evidence still in  
14 tact.

15 Q. And how is an autopsy performed or where  
16 do you start and how do you work through it?

17 A. The autopsy or postmortem examination  
18 begins with an external examination of the body  
19 documenting any clothing or any evidence that might  
20 be present. Also documenting any signs of any  
21 injury. That documentation is photographed and  
22 also body diagram. I also create certain notes  
23 during that time.

24 Following that, then I do internal examination  
25 which the major organ systems of the body are

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1 examined. Again, looking for signs of injury and  
2 collecting any fluids or other evidence that might  
3 be necessary.

4 Q. And, Dr. Lauridson, with regard to  
5 Jonathan Farrell, did you follow this procedure in  
6 conducting your autopsy with regard to Mr. Farrell?

7 A. I did, yes.

8 Q. And, Dr. Lauridson, did you reach a cause  
9 of death for Mr. Farrell?

10 A. I did.

11 Q. And if you will, please, explain to the  
12 ladies and gentlemen of the jury what the cause of  
13 death was.

14 A. The cause of death of Mr. Farrell was a  
15 gunshot wound to his head.

16 Q. Dr. Lauridson, are you familiar with this  
17 photograph?

18 A. I am.

19 Q. And what will this paragraph represent?

20 A. This is a photograph of Mr. Farrell  
21 before he was injured and killed.

22 Q. Are you familiar with this photograph?

23 A. I am.

24 Q. And what does that photograph represent?

25 A. This is a photograph of Mr. Farrell's

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1 face after he had been killed at the scene.

2 Q. Dr. Lauridson, what does that photograph  
3 represent?

4 A. This is a diagram that's used to  
5 illustrate the location of wounds. And this  
6 represents a front view of the face.

7 Q. Dr. Lauridson, did you put this graphic  
8 together?

9 A. Beg your pardon?

10 Q. Did you put this graphic together?

11 A. I did, yes.

12 Q. Dr. Lauridson, these red spots that  
13 appear on the head in this general area, can you  
14 identify those for me, please?

15 A. Yes, those spots are meant to indicate  
16 the location of superficial injuries to  
17 Mr. Farrell's left forehead.

18 Q. What about the wounds here on his cheek?

19 A. The same with the wounds to the left  
20 cheek are locations of abrasions.

21 Q. Dr. Lauridson, this area that appears in  
22 red on his nose --

23 A. Mr. Farrell also had superficial injuries  
24 to his nose.

25 Q. And finally, Dr. Lauridson, this area



1 around his -- appears to be around his mouth?

2 A. The left upper lip also had abrasions and  
3 contusions.

4 Q. Dr. Lauridson, the picture that just  
5 appeared to the right, what is this picture today?

6 A. This is a photograph I took during the  
7 postmortem examination.

8 Q. And, Dr. Lauridson, this photograph  
9 here --

10 A. Likewise.

11 Q. Dr. Lauridson, what can you tell us about  
12 these injuries? I believe you described them as  
13 being superficial.

14 A. The injuries that are indicated on the  
15 diagram on the left are shown in a photograph taken  
16 at the autopsy. These are all superficial  
17 injuries. They're scraped injuries, technical  
18 terms -- abrasion. It means that the skin is  
19 scraped along something rough and the skin has been  
20 scraped off.

21 Q. Dr. Lauridson, this particular area that  
22 that appeared -- what are these arrows --

23 A. These arrows are simply there to assist  
24 in correlating the diagram and photograph.

25 Q. Do these arrows fairly and accurately

160

1 depict the nature and the location of the injuries  
2 that were sustained to Mr. Farrell's face?

3 A. They do.

4 Q. Dr. Lauridson, this particular graphic  
5 here, did you prepare as well?

6 A. I did.

7 Q. And what does this graphic represent?

8 A. This is a diagraphic view of the left  
9 side of the face.

10 Q. Dr. Lauridson, what does the arrow there  
11 represent?

12 A. The arrow represents the location of a  
13 gunshot wound to the left cheek. It also indicates  
14 the direction that the bullet was traveling when it  
15 struck the cheek.

16 Q. And, Dr. Lauridson, first of all, how can  
17 you determine the direction that a -- first of all,  
18 how can you determine this was a gunshot?

19 A. It had -- it had configuration in the  
20 front part of it what's called an abrasion collar,  
21 where the bullet then begins to enter. And as the  
22 bullet tore along the skin -- this was a grazed  
23 wound -- as it tore along the skin, it tore the  
24 skin in a certain way. And by looking at the way  
25 that skin was torn, I could then tell the direction

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1 that the bullet was traveling.

2 Q. And, Dr. Lauridson, does this arrow in  
3 this graphic depict the direction that that  
4 projectile traveled?

5 A. It does.

6 Q. Dr. Lauridson, what would this photograph  
7 represent?

8 A. This is a photograph that shows the  
9 grazed wound to the left cheek that we were just  
10 discussing.

11 Q. And this photograph here?

12 A. This is the close-up photograph of that  
13 same grazed wound. And over on the left -- on the  
14 observer's left side in that area is the abrasion  
15 collar that I mentioned, that's where the bullet  
16 first entered the skin. And then along that wound,  
17 one can see the skin tags -- the tears in the skin  
18 that I was talking about. And those tears assisted  
19 me and actually allowed me to establish the  
20 direction that the bullet was traveling.

21 Q. Dr. Lauridson, what does this graphic  
22 represent?

23 A. This is a graphic that indicates the  
24 location of the gunshot wound to the right and back  
25 of Mr. Farrell's head.

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1 Q. Dr. Lauridson, the red circle there in  
2 this general vicinity, what does it represent?

3 A. Well, that's -- that is meant to  
4 illustrate the location of the wound.

5 Q. Dr. Lauridson, the photograph that  
6 appeared to the right, what does this photograph  
7 represent?

8 A. This is a photograph of an x-ray that I  
9 had taken during the postmortem examination during  
10 the autopsy.

11 Q. Dr. Lauridson, what is the purpose for  
12 taking an x-ray in this case?

13 A. The x-ray assists us greatly in locating  
14 the bullet because it shows up on the x-ray.

15 Q. Dr. Lauridson, the circle that appears on  
16 the x-ray, what would this x-ray represent?

17 A. The circle on this x-ray is the entrance  
18 wound. As one looks closely there, you can see a  
19 little hole in the bone. You can also see little  
20 fine fragments of lead that broke off when the  
21 bullet entered the bone at that point.

22 Q. Dr. Lauridson, would the circle there in  
23 the x-ray and the red dot on the graphic, do they  
24 correspond with one another?

25 A. They do.

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1 Q. Dr. Lauridson, the circle that just  
2 appeared on the right of the x-ray, what does the  
3 circle represent?

4 A. This is the bullet.

5 Q. Dr. Lauridson, the photograph that just  
6 popped up there, what would that photograph  
7 represent?

8 A. That's a close-up view of the bullet  
9 after I had recovered it from Mr. Farrell's head.

10 Q. Dr. Lauridson, in your experience as a  
11 pathologist, what can you tell us about this  
12 particular type of projectile as far as the type of  
13 gun that would have fired it?

14 A. The best that I can tell is that it  
15 appeared to be a small caliber. I can't tell  
16 anything more than that. And, obviously, the  
17 bullet had also undergone a great deal of damage as  
18 a result of having gone through bone and striking  
19 bone.

20 Q. Dr. Lauridson, the photograph that just  
21 popped up in the center of the screen, what would  
22 this photograph represent?

23 A. That's a photograph of the same bullet,  
24 except it's taken further away, and it shows the  
25 evidence envelope that I sealed the bullet in.

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1 Q. Dr. Lauridson, I'm going to show you what  
2 I've marked for identification purposes as State's  
3 Exhibit No. 45. Can you take a look at this and  
4 identify this for the ladies and gentlemen of the  
5 jury?

6 A. Yes, this is that evidence envelope with  
7 my initials on it, the case number, and the date.

8 Q. And has that evidence envelope been  
9 sealed?

10 A. It has been, yes.

11 Q. Is that evidence envelope, the contents  
12 of that, do you know what it is?

13 A. It's that bullet that you can see on the  
14 screen.

15 Q. And would that envelope and that  
16 projectile therein be in the same or substantially  
17 the same condition as it was when you recovered it?

18 A. Yes.

19 MR. KIDD: Your Honor, we offer  
20 State's 45 at this time.

21 THE COURT: Admitted.

22 (State's Exhibit No. 45 was admitted  
23 into evidence.)

24 Q. Dr. Lauridson, this red arrow that just  
25 appeared through the x-ray photograph, what does it

165

1 represent?

2 A. It represents the general direction of  
3 the bullet traveling to the left on Mr. Farrell's  
4 body and downward and very slightly backward.

5 Q. Dr. Lauridson, did you prepare this  
6 particular graphic?

7 A. I did.

8 Q. And what does it represent?

9 A. It is a diagram also of the view of the  
10 left side of the person's face and head.

11 Q. Dr. Lauridson, the arrow that just  
12 appeared on the screen, what does this arrow  
13 represent?

14 A. That represents the direction of the  
15 gunshot that struck Mr. Farrell in the cheek.

16 Q. You categorized this gunshot as a grazed  
17 type injury?

18 A. Yes.

19 Q. Dr. Lauridson, the second arrow that just  
20 appeared in this graphic, what would it represent?

21 A. That arrow represents the direction of  
22 the bullet that struck Mr. Farrell in the right  
23 side of his head.

24 Q. And, Dr. Lauridson, do these two arrows  
25 fairly and accurately reflect the general direction

166

1 that the projectiles took when they struck  
2 Mr. Farrell?

3 A. Yes, they do.

4 Q. Dr. Lauridson, of these two projectiles  
5 or the two injuries there, which one was the fatal  
6 injury?

7 A. The gunshot wound to the right side of  
8 the head.

9 Q. Would that be the area that I'm pointing  
10 to now?

11 A. It is.

12 Q. Dr. Lauridson, did you prepare this  
13 particular graphic?

14 A. I did.

15 Q. And what does it represent?

16 A. It represents the back of a head  
17 diagrammatically.

18 Q. Dr. Lauridson, there's a red area that  
19 appears on this graphic. Can you tell us what that  
20 red area represents?

21 A. This is the location of a laceration, a  
22 different kind of wound, to the back of  
23 Mr. Farrell's head.

24 Q. Dr. Lauridson, the photograph that just  
25 appeared on the screen, what does this photograph



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1 represent?

2 A. This is a close-up view of that  
3 laceration taken at the time of autopsy.

4 Q. Dr. Lauridson, from observing this type  
5 of injury, what does this type of injury tell us as  
6 far as the possible causes?

7 A. This is classified as a laceration, which  
8 to the medical examiner, means that it was caused  
9 by something that's blunt, so that it struck the  
10 head and actually tore the tissue causing that  
11 opening in the skin. This is a distinctive  
12 something such as a knife, and this is caused by a  
13 blunt object.

14 Q. Dr. Lauridson, when you're talking about  
15 blunt, would you acquaint that term to something  
16 that's flat?

17 A. Yes, it could be.

18 Q. Dr. Lauridson, are you familiar with this  
19 photograph?

20 A. I am.

21 Q. The piece right here that's identified in  
22 the circle, what would that be?

23 A. It was a piece of board -- piece of wood.

24 Q. That particular piece of evidence there,  
25 would it be consistent in causing that type of

168

1 injury?

2 A. It is consistent with it, yes.

3 Q. And, Dr. Lauridson, there is no way that  
4 you can possibly tell us if that board caused that  
5 specific injury; is that correct?

6 A. That is correct.

7 Q. But that particular wound is consistent  
8 with that type of object?

9 A. Yes.

10 Q. Dr. Lauridson, did you prepare this  
11 particular graphic?

12 A. I did.

13 Q. What does it represent?

14 A. It is a diagram representing the back of  
15 a person.

16 Q. Did you notice any type of injuries on  
17 the back of Mr. Jonathan Farrell?

18 A. I did, yes.

19 Q. The area that just appeared on the  
20 graphic, would that represent the general area that  
21 you observed this injury?

22 A. Yes.

23 Q. What type of injury was it?

24 A. It was also a superficial abrasion kind  
25 of injury.

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1 Q. Dr. Lauridson, what does this particular  
2 graphic represent?

3 A. This is a diagram of a person's knees.

4 Q. Dr. Lauridson, the area -- well, let me  
5 ask you this. Did you observe any type of injury  
6 to Mr. John Farrell's knees?

7 A. I did.

8 Q. And this particular area that appears on  
9 the graphic, is that the general location where  
10 those injuries were observed?

11 A. It is.

12 Q. Dr. Lauridson, the photograph that just  
13 appeared, what does it represent?

14 A. It's a photograph of Mr. Farrell's left  
15 knee that I took at the time of the autopsy.

16 Q. And the arrow that just appeared on the  
17 screen, what does it reflect?

18 A. It reflects the relationship to the  
19 injury showed on the diagram and the injury  
20 observed on the photograph.

21 Q. Dr. Lauridson, what does this particular  
22 graphic represent?

23 A. This is a diagram of the left side of a  
24 person's chest and abdomen.

25 Q. Did you observe any type of injuries to

170

1 Mr. Farrell's left side or abdomen?

2 A. I did.

3 Q. And the area that's indicated with the  
4 red on the graphic, what does it represent?

5 A. It represents the area that I noted the  
6 injury.

7 Q. In this particular photograph here, what  
8 does it represent?

9 A. It shows the same area outside of the  
10 abdomen.

11 Q. Dr. Lauridson, what can you tell us about  
12 this particular injury?

13 A. This, likewise, is a superficial injury.  
14 It's an abrasion. Something pushed or was rubbed  
15 along the abdomen, that area.

16 Q. What does this particular arrow  
17 represent?

18 A. It also shows the correlation between the  
19 location on the diagram and the location of the  
20 photograph.

21 Q. Dr. Lauridson, what would this graphic  
22 represent?

23 A. This is a view of the left side of a left  
24 forearm.

25 Q. Did you notice any type of injuries to

171

1 the left side or left lower arm of  
2 Mr. Jonathan Farrell?

3 A. I did.

4 Q. The area that just appeared on the  
5 graphic, what does it represent?

6 A. It's a location of a superficial injury  
7 on the side of Mr. Farrell's left elbow.

8 Q. Dr. Lauridson, this particular area here  
9 at the top, what does it represent?

10 A. Those are injuries also on the left lower  
11 arm and left hand.

12 Q. These particular injuries that are on his  
13 hand, can you classify those type of injuries for  
14 us?

15 A. Those are, likewise, superficial injuries  
16 and abrasions and contusions.

17 Q. Dr. Lauridson, this particular photograph  
18 here, what does it represent?

19 A. It's a photograph on the injury on the  
20 left side of Mr. Farrell's elbow.

21 Q. And the corresponding arrow?

22 A. That correlates the location in the  
23 diagram and the photograph.

24 Q. Dr. Lauridson, on the photograph in the  
25 center of the screen, what does it represent?

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1 A. It's the back of Mr. Farrell's hand.

2 Q. And the corresponding arrow there?

3 A. It shows the location of those injuries.

4 Q. And finally the last arrow that appeared?

5 A. Correlates the location of those injuries  
6 in the diagram.

7 Q. Dr. Lauridson, this particular photograph  
8 here, have you been able to identify it?

9 A. I'm sorry. I missed the question.

10 Q. Can you identify this photograph here?

11 A. Yes, I have seen this photograph before.

12 Q. Dr. Lauridson, all of these photographs  
13 that appeared in power-point presentation, how was  
14 this power-point presentation put together -- well,  
15 let me rephrase that. That's not a very good  
16 question. The photographs that we have previously  
17 entered into evidence, are those photographs the  
18 photographs that appeared in the power-point  
19 presentation?

20 A. They are, yes.

21 Q. Now, Dr. Lauridson, do you prepare a  
22 report of your findings?

23 A. I do, yes.

24 Q. And how do you memorialize those or how  
25 do you record those? What do you -- let me

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1 withdraw that question. It's not a very good  
2 question. What's contained in your report?

3 A. In my report, it's a description of my  
4 findings in a seven step that reflects my opinion  
5 in the cause of death.

6 Q. Dr. Lauridson, I'm going to show you what  
7 I'm marking as State's Exhibit No. 41. Can you  
8 identify State's 41 for me, please?

9 A. This is a copy of my report.

10 MR. KIDD: Your Honor, we offer  
11 State's 41 at this time.

12 THE COURT: Admitted.

13 (State's Exhibit No. 41 was admitted  
14 into evidence.)

15 MR. KIDD: I don't have any further  
16 questions for Dr. Lauridson.

17 CROSS-EXAMINATION

18 BY MR. DURANT:

19 Q. Good morning. How are you?

20 A. Good morning.

21 Q. Dr. Lauridson, is it your testimony that  
22 the bullet that caused the death of Mr. Farrell was  
23 too damaged to be recognizable as any particular  
24 caliber?

25 A. It appeared to me that that was the case.

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1       However, I'm not an expert in firearms and that  
2       question probably was best left to the firearms  
3       examiner.

4           Q.     Could you -- could you state -- in  
5       examining the body, there were several abrasions --  
6       superficial abrasions as you testified to?

7           A.     Yes, sir.

8           Q.     Could you state what could have caused  
9       those abrasions?

10          A.     The best I can say is the abrasions were  
11       caused by something that was relative flat and  
12       rough. But beyond that, I can't be more specific.

13          Q.     Could you state whether they were caused  
14       by someone hitting someone?

15          A.     We're talking about just the abrasions  
16       over the face and the arms --

17          Q.     -- and the legs.     --

18          A.     It's possible, I suppose, that the  
19       abrasions on the hands may have been related to  
20       that. The abrasions over the face, however, look  
21       more like abrasions, meaning something flat and  
22       rough and had drug the skin over that.

23          Q.     That could have -- that -- is it possible  
24       that that could have resulted from a fall?

25          A.     Yes.



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1 Q. And I don't know whether this is a fair  
2 question for you. The wound that created the  
3 laceration at the back of the head and the board --

4 A. Yes.

5 Q. -- were you in possession of that piece  
6 of board?

7 A. No.

8 Q. So you don't know that any examination  
9 was made of that board --

10 A. I don't.

11 Q. -- in terms of blood?

12 A. I don't.

13 Q. Could you -- could you ascertain from,  
14 say, the bullet that was fired around the cheek  
15 area -- facial area, could you ascertain just how  
16 close a range that was?

17 A. I could not.

18 Q. You could not?

19 A. It was not a close range going in,  
20 because I did not see --

21 Q. It was not a close range you say?

22 A. That's right. Because I didn't see  
23 stippling. But beyond that, I can't say the  
24 distance.

25 Q. Okay. The wound to the head, could you

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1 ascertain whether that was a close range or medium  
2 range or whatever?

3 A. Yes. It was very close. I call it a  
4 contact wound.

5 Q. So you would -- would you say that all --  
6 most of the superficial abrasions that you speak  
7 of, that most of them could have been caused by a  
8 fall or falling over or whatever?

9 A. I think that's certainly one acceptable  
10 explanation for it, yes.

11 Q. In your internal examination, were you  
12 able to determine the use of any substances --  
13 illegal substances or alcohol or what have you?

14 A. Yes.

15 Q. What kind of substances did you find?

16 A. I collected --

17 Q. -- traces of?

18 A. I collected fluids and tissues for  
19 examination by our toxicologists. Would you like  
20 me to read those results?

21 Q. Yes. Thank you.

22 A. There was alcohol present. And there  
23 were traces of cocaine and cocaine metabolites  
24 present.

25 Q. What is cocaine metabolites indicative

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1 of?

2 A. Cocaine metabolite is what happens to  
3 cocaine after you take it in your body. The body  
4 breaks it down into different substances.

5 Q. And can you differentiate -- are you  
6 differentiating metabolites when the body breaks it  
7 down and in another situation where the body has  
8 just ingested -- let me ask the question another  
9 way. Could -- in your examination, were you able  
10 to determine whether cocaine had recently been  
11 used?

12 A. That's beyond my well of expertise.

13 Q. Okay. What was the alcohol level?

14 A. 0.26 percent.

15 Q. And just for the ladies and gentlemen of  
16 the jury, what amount of alcohol is that?

17 A. Well, one reference is that in Alabama,  
18 to be illegally intoxicated for driving purposes,  
19 the number is 0.08 percent, so that this number was  
20 greater than three times that.

21 Q. So a person is fairly intoxicated with  
22 this level of alcohol?

23 A. It's hard for me to say how certain  
24 levels would affect individuals. But, it -- this  
25 amount was certainly very --

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1 Q. And your -- your examination in this case  
2 and in other cases -- but we're dealing with this  
3 specific case here -- your examination of a body is  
4 somewhat divorced from the rest of the  
5 investigation as far as the Department of -- the  
6 Montgomery Police Department is concerned?

7 A. May I elaborate on that question?

8 Q. (Attorney nods.)

9 A. I take into account scene circumstances  
10 in my establishing the manner of death. But I  
11 think the answer to your question, beyond that, I  
12 don't interact with the police in their  
13 investigation.

14 Q. So your investigation, if I may use this  
15 word -- is somewhat antiseptic? It is somewhat  
16 removed from --

17 A. Yes.

18 Q. -- from the investigation?

19 A. Yes. I don't participate in the  
20 police --

21 Q. Yours is purely scientific so-to-speak?

22 A. Yes.

23 MR. DURANT: Thank you. That's all.

24 MR. KIDD: Judge, I have just a  
25 couple of questions on redirect.

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## REDIRECT EXAMINATION

BY MR. KIDD:

Q. Dr. Lauridson, if you'll reference the report, can you tell me the height and weight of Mr. Farrell?

A. Yes. Mr. Farrell was sixty-seven inches tall, five foot, seven and weighed a hundred and fifty-six pounds.

Q. Dr. Lauridson, Mr. Durant asked you, specifically, if the type of abrasions and lacerations could be consistent with Mr. Farrell falling down. I believe you said that -- it's a possibility. Would it not also be possible that those wounds could have been created if he were drug down the road?

A. Yes.

Q. And, Dr. Lauridson, you spoke in regard to Mr. Durant's question about the gunshot that you classified as a fatal gunshot being the contact wound?

A. Yes.

Q. What, specifically, do you look for or what does the evidence tell you or how do you determine that type of range of gunshot?

A. When I see a gunshot wound to the head

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1 and, particularly, gunshot wound, it's a small  
2 caliber, I look, first of all, to see if there is  
3 any substances deposited on the skin around the  
4 wound, such as called soot stippling. And then I  
5 look at the wound itself. In this case, the barrel  
6 was close enough that the wound had actually torn  
7 open when the bullet was fired and soot, which is  
8 burned to death gunpowder had been deposited inside  
9 the wound. That's an indication to me that the  
10 barrel was close in Mr. Farrell's skin when it was  
11 fired.

12 Q. And, Dr. Lauridson, did you detect any  
13 soot or stippling around the out -- or outer  
14 surfaces of the injury?

15 A. I did not.

16 Q. And for what you're saying, the only  
17 place that you saw soot was in the inner portions  
18 of that particular injury?

19 A. Yes.

20 Q. And you talked about some cuts or some  
21 skin tears, what actually causes that?

22 A. Now, that's in reference to the abrasion?

23 Q. No. I'm talking about the gunshot to the  
24 top of the head. I'm sorry.

25 A. Yes. The tears in the skin occur because

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1 when you shoot a gun, in addition to the bullet,  
2 gases come out of the end of the barrel. And if  
3 the barrel is tight against the skin, those gases  
4 are trapped in the wound and those gases can cause  
5 the wound to tear.

6 Q. Now, Dr. Lauridson, Mr. Durant asked you  
7 about the blood alcohol level of Jonathan Farrell.  
8 Actually, there are two blood alcohol levels listed  
9 there in your report; is that correct?

10 A. Yes.

11 Q. Explain those two differences of the two.

12 A. One is the actual blood alcohol level and  
13 the other is the level of alcohol in the fluid that  
14 was removed from the eye, called the vitreous  
15 wound.

16 Q. And, Dr. Lauridson, why do you take two  
17 or why are there --

18 A. Couple of reasons. One is that they kind  
19 of check on each other. But, also, if the person  
20 has just begun to drink, we expect the blood  
21 alcohol to be higher than the alcohol in the fluid  
22 in the eye. But if a person has stopped drinking,  
23 then we often expect to see the blood alcohol to be  
24 lower than the alcohol in the eye. In other words,  
25 the alcohol within the eye lags behind the blood

1 alcohol.

2 Q. And, Dr. Lauridson, what was the  
3 discrepancy between vitreous humor and in the blood  
4 alcohol?

5 A. The blood alcohol in the case was 0.26,  
6 and the vitreous humor alcohol in the eye was 0.29  
7 percent.

8 Q. So the vitreous humor alcohol was higher  
9 than the blood alcohol level?

10 A. It was.

11 Q. And what would that indicate to you?

12 A. It indicates to me that Mr. Farrell was  
13 no longer taking alcohol in, and had started then  
14 to metabolize the alcohol in his blood stream.

15 Q. Dr. Lauridson, someone that is 0.26 blood  
16 alcohol level, would that level severely impair  
17 their motor capabilities? Could it?

18 A. It could --

19 MR. DURANT: Objection.

20 THE COURT: Overruled.

21 Q. Could -- I'm sorry.

22 A. As I mentioned earlier, I can't make  
23 comments about specific individuals. But,  
24 generally, that level is one we would associate  
25 with some impairment.



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1 Q. And, Dr. Lauridson, just let me rephrase  
2 my question. For someone that was 0.26, would  
3 their motor capabilities with no blood alcohol  
4 level at all?

5 A. Yes.

6 MR. KIDD: I have no further  
7 questions, Your Honor.

8 THE COURT: Anything else?

9 (No response.)

10 THE COURT: Okay. You're excused -

11 MR. KIDD: Yeah, may he be excused,  
12 Your Honor?

13 THE COURT: Yes.

14 (Witness excused.)

15 THE COURT: Let me see where we are  
16 with witnesses.

17 (Bench conference was held.)

18 THE COURT: At this time, does the  
19 State have any other witnesses?

20 MR. KIDD: Judge, the State would  
21 rest at this time.

22 THE COURT: We're going to need to  
23 take up some things outside the presence of the  
24 jury, so I'm going to give you a fifteen-minute  
25 recess, and we'll see where we are.

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1 (Out of the presence of the jury.)

2 THE COURT: Okay. Mr. Durant, the  
3 State has rested. And do you have any motions?

4 MR. DURANT: Judge, the defense  
5 would move for a judgment of acquittal based on the  
6 fact that the State has not met its burden by tying  
7 Mr. Watkins in the commission of this crime.

8 THE COURT: I'm going to deny your  
9 motion. I think a jury question is presented. And  
10 if you'll tell me -- we'll take a few minutes and  
11 you can see where you are.

12 (Brief recess was taken.)

13 (Back on the record.)

14 MR. DURANT: Judge, I just want to  
15 say to the Court that I have discussed with  
16 Mr. Watkins his right to take the stand and his  
17 right not to take the stand.

18 And is it your decision, Mr. Watkins, that you  
19 are going to take the stand?

20 THE DEFENDANT: Yes, sir.

21 MR. DURANT: And you have not been  
22 coerced or forced to do that?

23 THE DEFENDANT: No, sir.

24 MR. DURANT: And you're doing this  
25 with your own free will?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you have discussed  
3 this in full detail with your attorney?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: And I'm sure he's given  
6 you certain legal advice, but it's your decision to  
7 take the stand?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Okay. Let's try to get  
10 started with him. We'll get the jury.

11 I'll go ahead and swear you in if you'll raise  
12 your right hand.

13 DAVID WATKINS

14 The witness, having first been duly sworn or  
15 affirmed to speak the truth, the whole truth, and  
16 nothing but the truth, testified as follows:

17 (In the presence of the jury. )

18 THE COURT: At the time, before the  
19 break, of course, the State had rested. And now  
20 the defendant is going to testify, and I've already  
21 sworn him in.

22 DIRECT EXAMINATION

23 BY MR. DURANT:

24 Q. Would you state your name for the ladies  
25 and gentlemen of the jury?

1           A.    Yes, my name is David Watkins.

2           Q.    And, Mr. Watkins, where -- prior to your  
3 arrest, where were you living?

4           A.    I was at Gibbs Village. I don't remember  
5 the address exactly, but that's where I was when  
6 they picked me up.

7           Q.    You have -- you have sat in the  
8 courtroom, and, obviously, you have heard all of  
9 the testimony. On October the 18th, 1999, did you --  
10 visit an address on Keystone Street?

11          A.    Yes, sir, I did.

12          Q.    Do you recall what time of the day that  
13 you got over there?

14          A.    I think it had to be around about --  
15 probably three in the afternoon, probably.

16          Q.    And who were you visiting?

17          A.    I was visiting Robert Watkins.

18          Q.    Are you related to Robert Watkins?

19          A.    Yes. Cousins.

20          Q.    When you first got there, was Mr. Watkins  
21 alone at home?

22          A.    Yes, sir.

23          Q.    At some point -- at some point that day,  
24 did someone else come over to the house?

25          A.    Yes.

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1 Q. Could you tell the ladies and gentlemen  
2 of the jury who came to the house?

3 A. Latoya Davis.

4 Q. Okay. About what time -- your best  
5 recollection, about what time did she come to the  
6 house?

7 A. I would have to say around about five  
8 maybe, six that same afternoon, I think, if I'm not  
9 mistaken.

10 Q. And what -- what y'all were doing?

11 A. Well, basically, we were just sitting  
12 around and -- Robert and I were drinking and  
13 listening to some CD's that I had out in the car.

14 Q. Okay. At some point in the evening, did  
15 anyone else come to the house?

16 A. When you say other than Robert and --

17 Q. Yourself.

18 A. The three that was there?

19 Q. Yes.

20 A. Yes. Mr. Farrell came along. Him and a  
21 friend came and dropped him off when he came.

22 Q. And could you remember what time that  
23 was?

24 A. Now, I don't remember the time exactly,  
25 but it was late probably. I'll say seven or eight

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1 probably.

2 Q. So from around say three o'clock to late  
3 in the evening, what -- what the three or four of  
4 you were doing -- well, at first, it was you,  
5 Mr. Robert Watkins, and Latoya Davis, what were the  
6 three of you doing?

7 A. We was pretty much listening to music and  
8 listening to her talk, you know. She was talking  
9 about -- whatever. I don't remember.

10 Q. You don't have to say what anybody was  
11 saying.

12 A. Oh, okay.

13 Q. At some point in the evening, did y'all  
14 decide to do anything in particular?

15 A. The three of us or the four?

16 Q. The four of you.

17 A. Oh, yes. After we finished conversating,  
18 talking and everything, we decided to play cards.

19 Q. Okay. And how long -- did something  
20 happen during the card game?

21 A. Um --

22 Q. Was there an argument or something like  
23 that --

24 A. Yes, there was.

25 Q. -- as best you can recall?

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1 A. Yes, sir.

2 Q. And who -- who did the argument involve?

3 A. Latoya Davis and Mr. Farrell.

4 Q. Okay. What was the -- what was the  
5 argument about?

6 A. I really don't recall, not exactly.

7 Q. Okay. Did anything happen?

8 A. Yeah, other than -- the two got into a  
9 fight, you know.

10 Q. Okay. Could you tell the ladies and  
11 gentlemen of the jury what was the nature of the  
12 fight in terms of what happened?

13 A. Physically?

14 Q. Yes.

15 A. Basically, it was more of a shove, push,  
16 and falling and, you know. And I think there was  
17 an incident where he got ready to sit down after  
18 Robert separated the two of them from fighting --  
19 at one time, he got ready to sit down, and she  
20 pulled his chair back, and he fell.

21 Q. Okay. And -- at some point in time, did  
22 they -- did they end up outside?

23 A. Yes, sir.

24 Q. And how did they happen to get outside?

25 A. I think Robert put them out at the time,

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1 because he didn't, you know, his kids were there,  
2 and she was trying to sleep or whatever, and he put  
3 them out then?

4 Q. Where were you at this time when they  
5 were put out?

6 A. Oh, I was putting the chairs and  
7 everything back to the table and pretty much  
8 putting everything back in order.

9 Q. Did there come a time that they reentered  
10 the house?

11 A. No, sir, I can't say that they did.

12 Q. Did you ever go outside?

13 A. Yes, I did.

14 Q. Okay. What did you observe when you went  
15 outside?

16 A. Well, when I first went out, Robert was  
17 on his way back in, you know. . . And I didn't see  
18 anybody on the outside at the time that I went out.

19 Q. Uh-huh.

20 A. You know. And --

21 Q. Did you -- any time subsequent to that,  
22 did you see anything?

23 A. I don't understand the question.

24 Q. Did you see Mr. Farrell and Latoya after  
25 that?



1 A. After they went outside?

2 Q. Yes.

3 A. Yes, sir, I did.

4 Q. And what was happening there?

5 A. There was another fight. Latoya  
6 continued to, you know, fight with him, you know.  
7 And, like I said, he was intoxicated. At the time  
8 they was drinking. So she was pretty much kicking  
9 him and, you know, shoving on him at the time.

10 Q. Okay. Did Mr. Robert Watkins come out  
11 any time after that?

12 A. Yeah, he came out to bring a towel to  
13 Mr. Farrell to wipe his nose or whatever.

14 Q. Okay. Did you -- did you eventually go  
15 back into the house?

16 A. Yes, sir, I did.

17 Q. When you went back into the house, where  
18 did you leave Mr. Farrell and Ms. Davis?

19 A. I think -- when I went back in the house,  
20 this was -- this was before the little  
21 confrontation that started right back up that had  
22 started in the house, but they were outside.

23 Q. Okay. After you went back in the house  
24 the second time, did you go back outside again?

25 A. Yes, sir, I did.

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1 Q. And did you see Mr. Farrell?

2 A. No, sir.

3 Q. You didn't see him? Did you see  
4 Latoya Davis?

5 A. No, I didn't actually see them when I  
6 came back out the second time.

7 Q. Okay. Did you hear any -- did you hear  
8 any gunshots during that time?

9 A. No, sir.

10 Q. Did you see Latoya Davis subsequent to  
11 that? Did she come back to the house?

12 A. You mean come back in?

13 Q. Yes.

14 A. No, sir.

15 Q. Okay. Did there come a time -- I believe  
16 it was the 21st of October -- that you got a call  
17 at your house where you got a call in Gibbs  
18 Village?

19 A. Yes, sir.

20 Q. And was that call from David Watkins --  
21 from Robert Watkins?

22 A. Yes, sir -- well, before I got the call  
23 from Robert, I got one from a detective that called  
24 first.

25 Q. And what did they want?

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1           A.    Well, they told me they needed me to come  
2           down and make a statement because they had a reason  
3           to believe that I was guilty of murder or had  
4           something to do with it -- involved in it or  
5           whatever..

6           Q.    Okay. And you were in Gibbs Village; is  
7           that correct?

8           A.    Yes, sir.

9           Q.    What -- you got off of work around 3:30,  
10          right?

11          A.    Yeah, three to four.

12          Q.    And they came to get you around seven,  
13          7:30; is that correct?

14          A.    Yeah, I think.

15          Q.    And what had you been -- what were you  
16          doing, prior to the time, they got you there?  
17          Could you tell the ladies and gentlemen of the jury  
18          what you were doing?

19          A.    Actually, it was on a Thursday when I got  
20          off, so I had just moved up here from Lowndes  
21          County to Gibbs Village, and I was getting ready to  
22          get a place on my own. So I recently talked to a  
23          landlord about getting a house, and she pretty much  
24          put the cards on the table so I could get that. So  
25          I was celebrating really, the house that I was

1 getting for the first time, so I was actually  
2 drinking and smoking to myself waiting on my father  
3 to come up there, so he can pretty much take me to  
4 get some furniture and everything for the house.

5 Q. Okay. And this particular -- this  
6 particular -- this particular afternoon, you  
7 were -- you were drinking and you were smoking  
8 marijuana; is that correct?

9 A. Yes, sir, I was.

10 Q. And you had been doing this for about  
11 four hours?

12 A. At the most, I was mostly drinking  
13 though.

14 Q. When -- when the detective came -- what  
15 time did the detective come to get you, your best  
16 recollection?

17 A. I have to say eight or either 8:30. I  
18 don't know. I'm not sure. It was late. Seven --  
19 I don't know.

20 Q. Okay. And when he came, how did he  
21 approach you?

22 A. Well, first, I heard a knock at the door,  
23 and then I was on the phone, because we were  
24 waiting for them to show up for them to come get  
25 me.

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1 Q. Because they had called you previously --

2 A. They called me earlier. So I was on the  
3 phone with my sister, and I was telling her that  
4 they hadn't showed --

5 Q. What happened in terms of how the  
6 detective entered the house and so forth?

7 A. Well, first, they knocked on the door and  
8 told me who they was. Once I seen them come in, I  
9 seen a pistol at my face to let me know if I did  
10 anything out of the way, they were going to shoot  
11 me pretty much.

12 Q. And what did the detective say to you?

13 A. First, he asked me to put the phone down.  
14 And when I reached to put the phone down, the other  
15 officer asked me to put the bottle of beer down  
16 that I had.

17 Q. And you complied with that? You did what  
18 they told you to do?

19 A. Yes, sir.

20 Q. And then they handcuffed you?

21 A. Yes, sir.

22 Q. And they took you down?

23 A. Yes, sir.

24 Q. Okay. When they took you down to  
25 headquarters, did you -- did they -- and before

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1 they gave you -- they mirandised you -- before they  
2 told you about your miranda rights, did you say  
3 anything to them?

4 A. No, sir. They were mostly doing all the  
5 talking.

6 Q. Okay. But did you tell them that you  
7 were drinking and you were smoking?

8 A. Yes, sir.

9 Q. And who did you tell this to?

10 A. The detective that brought me down.

11 Q. Okay. And they spoke to you generally  
12 prior to putting you on the videotape, right? They  
13 talked to you before they actually taped you?

14 A. Yes, sir.

15 Q. And how long did they talk to you?

16 A. I'll say twenty-five, fifteen -- fifteen  
17 or twenty minutes.

18 Q. And what do they -- do you recall what  
19 they said to you?

20 A. They pretty much told -- the officer that  
21 told me, he said, first, if you expect for me to --  
22 first -- let me see if I can quote exactly what he  
23 said. He said, First, if you expect me to take  
24 your story over Latoya's story, you can forget it.  
25 He said, The story that Robert gave was a crack of

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1 bull, so on and so forth. And there's no way that  
2 I will take y'all's story over hers.

3 Q. Okay. And did you understand -- did you  
4 fully understand -- when he was explaining to you  
5 about your rights, did you understand that?

6 A. Not as well as I feel I should have.

7 Q. And did you indicate at any point -- in  
8 the pre-interview, did you indicate to them that  
9 you really didn't want to give a statement in that  
10 state?

11 A. Yes, sir, I did.

12 Q. And what did they say to you?

13 A. Well, they pretty much ignored what I was  
14 saying and kept talking. I guess considering that  
15 I came down, I wanted to give a statement, I  
16 suppose.

17 Q. And they -- you told certain things in  
18 the pre-interview, right?

19 A. Yes, sir.

20 Q. One of those things that you didn't want  
21 to give a statement?

22 A. Yes, sir.

23 Q. Because you had been drinking and your  
24 head is not clear; is that correct?

25 A. Yes, sir.

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1 Q. And how did the detectives treat you?

2 A. Well, once the tape came on, they treated  
3 me fair. But before then, it was more of a, you  
4 know, whatever you say, we'll just take it as it  
5 is. In other words, they was -- I wouldn't say  
6 they was fair. I wouldn't say that.

7 Q. But did you feel like you were being  
8 intimidated?

9 A. Yes, sir, I was -- I did. .

10 Q. And you made it clear to them that you  
11 didn't want to give a statement?

12 A. Yes, sir, I did.

13 Q. Once you -- do you -- you saw the  
14 videotape yesterday. And you saw the statement --  
15 you saw the statement that you made. Do you recall  
16 anything in that statement as you gave it on that  
17 particular evening?

18 A. Well, actually that statement that I  
19 gave, I don't. I really don't remember giving it.  
20 But I can't say I didn't do it, considering that I  
21 seen it. A lot of stuff that I said shouldn't have  
22 been said in the beginning, but, I guess, I  
23 wasn't --

24 Q. Okay. There were a couple points during  
25 the statement where the officer said to you in a



1 very sharp tone, do you want -- do you want to  
2 cooperate? And you said, Well, not really. What  
3 was going on then in your mind?

4 A. Well, actually --

5 MR. KIDD: Judge, I'll object as to  
6 what was going on in his mind.

7 THE COURT: I'll sustain.

8 Q. Well, what were you -- what were you  
9 thinking?

10 MR. KIDD: I'll object to what he  
11 was thinking.

12 THE COURT: Sustained.

13 Q. Okay. When the officer said to you, Do  
14 you want to cooperate, what did you -- what was  
15 your response?

16 A. Well, actually, I really didn't know the  
17 whole story to what they wanted to know. I didn't  
18 know the whole, you know, incident as it really  
19 happened, and I couldn't remember it, so, it was --  
20 I really didn't want to give a statement because I  
21 really didn't know exactly what happened as far as  
22 that, the murder, anyway.

23 Q. Okay. Do you -- do you recall you  
24 saying -- well, you saw the tape yesterday and so  
25 I'm sure you recall that you -- you urinated on

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1 Mr. Farrell? Do you recall that?

2 A. No.

3 Q. In the video?

4 A. No, I really don't recall it.

5 Q. But you saw it on the video?

6 A. But I did see it, yes.

7 Q. But do you recall it as of the night that  
8 happened?

9 A. I can't remember exactly how it -- you  
10 know, what exactly happened that night.

11 Q. Okay. The night that you were giving the  
12 statement?

13 A. Yes, sir.

14 Q. There's a statement in there, as you  
15 recall, that you kicked him. Do you recall -- do  
16 you recall saying that when you gave that  
17 statement?

18 A. In the statement?

19 Q. Yes.

20 A. No, I don't recall saying that.

21 Q. Did you -- did you know Mr. Farrell prior  
22 to that evening?

23 A. No, sir, I can't say that I know him.

24 Q. And that was the first time that you had  
25 seen him?

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1 A. No, I think I seen him once before,  
2 before then. But, you know, I didn't know him,  
3 actually know him.

4 Q. But that was the first time that you  
5 actually sort of socialized?

6 A. Yes, sir.

7 Q. Did you have anything against  
8 Mr. Farrell?

9 A. No, sir.

10 Q. Was there any reason for you to not like  
11 him?

12 A. No, I can't say that there was.

13 Q. Did you have anything to do with the  
14 shooting of Mr. Farrell?

15 A. No, sir, I didn't.

16 Q. Did you see the -- did you witness the  
17 shooting of Mr. Farrell?

18 A. No, sir.

19 MR. DURANT: That's all.

20 THE COURT: Mr. Kidd, come up here.

21 (Bench conference was held.)

22 THE COURT: We're going to go ahead  
23 and take a lunch break. I'm going to give you  
24 until 1:15. It's -- I have about -- the clock up  
25 there says about ten till, so 1:15, and we'll get

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1 you in the jury assembly room. And everyone stay  
2 in the courtroom until the jurors leave.

3 (Lunch break was taken.)

4 (In the presence of the jury.)

5 THE COURT: Okay. Are you ready for  
6 your cross-examination?

7 MR. KIDD: Yes, ma'am.

8 CROSS-EXAMINATION

9 BY MR. KIDD:

10 Q. Mr. Watkins, I'm Mike Kidd with the  
11 district attorney's office. I'm going to be asking  
12 you a few questions, okay?

13 A. Okay.

14 Q. In the event you don't understand any of  
15 my questions, if you'll just tell me and ask me to  
16 start over, I'll either restate my question or I'll  
17 try to rephrase it in a way that you can  
18 understand. Okay?

19 A. Yes, sir.

20 Q. There's something that I want to start  
21 with and I want to get clear. You told Mr. Durant,  
22 your attorney, that when the police officers took  
23 you down to the police station, there were portions  
24 of things that happened that night that you did not  
25 remember; is that correct?

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1 A. Yes, sir.

2 Q. Okay. I understood --

3 THE COURT: Could you slip up just a  
4 little bit toward that microphone?

5 THE WITNESS: (Witness complies.)

6 Q. Just for my own benefit, I'm going to  
7 start back with the moment that you got to the  
8 police station. Do you recall about what time it  
9 was?

10 A. No, sir, I'm not exactly sure what time  
11 it was.

12 Q. From the time that the police officers  
13 arrived at your house until the time that it took  
14 you to get to the police station, about how long  
15 did that take?

16 A. I'm not sure.

17 Q. Would it be less than thirty minutes?

18 A. It should take less than thirty minutes,  
19 it should.

20 Q. Okay. Now, you told your attorney, if I  
21 understood correctly, that the police officers came  
22 to your house sometime between seven and 7:30 p.m.;  
23 is that correct?

24 A. If I'm not mistaken, it should be around  
25 that time.

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1 Q. Okay. So that would put you at the  
2 police station somewhere between 7:30 p.m. and 8:00  
3 p.m.; is that correct?

4 A. I suppose so.

5 Q. Okay. What do you remember happening  
6 when you first got to the police station?

7 A. Let me think. Just only -- they took me  
8 upstairs to the -- to the room or whatever, and I  
9 was handcuffed to the table. From there, they  
10 asked me -- let me think -- I think they offered me  
11 something to drink or whatever. And I think I took  
12 a cup of coffee from them. I think they  
13 probably -- let me think -- from there, I think  
14 they started stating why they had me down there and  
15 so on and so forth.

16 Q. Did you have to sit and wait for any  
17 period of time before they started questioning you?

18 A. Yes, sir, I did.

19 Q. Do you recall how many detectives were  
20 questioning you?

21 A. No, I can't say that I can recall how  
22 many. I remember there was more than one in the  
23 room.

24 Q. Okay. And do you remember -- do you  
25 remember if there were any females in the room --

1 female detectives in the room?

2 A. Yeah, I think there was one.

3 Q. Okay. And how many male detectives do  
4 you remember?

5 A. The rest of them were males according to  
6 my memory.

7 Q. You saw Sergeant Loria testify yesterday,  
8 Tony Loria. Do you recall him being there? Do you  
9 recall speaking to Mr. Loria?

10 A. That's the guy with the low hair cut,  
11 right?

12 Q. Yes, sir.

13 A. Yeah, I remember him.

14 Q. So you remember him being there as well?

15 A. Yeah, I remember his face.

16 Q. Okay. Now, you started your testimony a  
17 few moments ago with what happened there on  
18 Keystone Street on the night of the 18th or the  
19 early morning hours on the 19th of October of 1999.  
20 During that statement, you said that Latoya Davis  
21 and Mr. Farrell got into an argument there at the  
22 card table; is that correct?

23 A. I wouldn't exactly call it an argument,  
24 but they got --

25 Q. Tell me --

1 A. -- into a little altercation.

2 Q. Well, tell me, so I've got a clear  
3 understanding, exactly what did happen between the  
4 two of them while you were at the card table?

5 A. Well, to the best of my memory, it was a  
6 few insults, you know.

7 Q. Who was insulting you?

8 A. Latoya was insulting him.

9 Q. And did those words come to blows where  
10 they were actually touching each other?

11 A. So as you're saying punching or slapping?

12 Q. Punching or slapping or pushing or  
13 tussling? Did any of those things occur?

14 A. That was on -- all right, to the best of  
15 my memory, I can only recall an insult and he stood  
16 up and she pulled his chair back when he got ready  
17 to sit back down.

18 Q. And he fell?

19 A. Yeah.

20 Q. How many people were sitting at the  
21 table?

22 A. There was four of us.

23 Q. And, if you would, describe where you  
24 were sitting at in relation to Robert Watkins?

25 A. Well, considering that me and Latoya was



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1 on --

2 Q. Teams.

3 A. -- teams, yeah. So I guess --

4 Q. So Robert was sitting directly either to  
5 your right or to your left?

6 A. Sitting to my right.

7 Q. To your right. Latoya Davis would have  
8 been directly in front of you, correct?

9 A. Yeah.

10 Q. And then Jonathan Farrell would have been  
11 to your right -- or excuse me, to your left or to  
12 your right?

13 A. He would have been to my left.

14 Q. Left. Okay. And after she pulled the  
15 chair out from under him, he fell to the floor,  
16 what happened?

17 A. Well, he got up. He got up and sat back  
18 in the chair.

19 Q. Did you continue to play cards?

20 A. Yes, sir, we did.

21 Q. What card game were you playing, if you  
22 recall?

23 A. I don't remember exactly what we was  
24 playing.

25 Q. Okay. How long had you been playing

208

1 cards?

2 A. We wasn't playing too long.

3 Q. A couple of hands?

4 A. I don't think we got through the first  
5 hand, I don't think.

6 Q. What ended the card game?

7 A. The altercation between her and  
8 Mr. Farrell.

9 Q. What exactly happened during that  
10 altercation? Describe it for me, please.

11 A. More or less like I -- like I said, it  
12 was a couple of insults given. I think there was a  
13 case when he responded back, you know.

14 Q. With another insult?

15 A. All right. Well, there was an insult  
16 given by her, which he responded back to the insult  
17 that was given. And I think he called her an unfit  
18 name, I'll put it like that.

19 Q. Did you ever see Latoya Davis make  
20 physical contact with Jonathan Farrell inside the  
21 trailer -- or inside the house, excuse me?

22 A. Physical contact in what way?

23 Q. In any way, pushing, shoving, slapping --

24 A. Yes, sir, I did.

25 Q. What did she do?

1 A. She pushed him, I remember that.

2 Q. And then what?

3 A. From there, you know, they -- once the  
4 noise started happening in the house, Robert  
5 escorted them to the -- um -- the door, told them  
6 to leave because he didn't want his baby woke.

7 Q. Would you describe their actions as  
8 tussling?

9 A. Well, I wouldn't actually call it a  
10 tussle, considering that he really wasn't doing too  
11 much of the hitting.

12 Q. What was he trying to do?

13 A. He was actually trying to leave.

14 Q. And she was -- was she trying to prevent  
15 him from leaving?

16 A. I would say that, yeah.

17 Q. So is it your testimony that  
18 Robert Watkins asked Ms. Davis and Mr. Farrell to  
19 leave the residence?

20 A. Uh-huh.

21 Q. And did he, in fact, escort them outside?

22 A. Yes, sir.

23 Q. And did you follow or did you go outside  
24 with Robert as he escorted the other two out of the  
25 house?

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1           A.    No -- after -- no, at the time, I didn't  
2 go out, I don't think. No.

3           Q.    What happened after Robert escorted them  
4 outside?

5           A.    Well, to be truthful, once they left out,  
6 I don't know what happened, because I didn't go  
7 outside.

8           Q.    Well, what did you do?

9           A.    Oh, I was still on the inside putting the  
10 chairs back in order at the table.

11          Q.    Who was the next person that you remember  
12 seeing after they left from the house?

13          A.    Robert.

14          Q.    And where did you see Robert at?

15          A.    He was coming back in the house.

16          Q.    And did -- I'm not asking you what he  
17 said -- but did Robert make any statements to you?

18          A.    Nothing, but they're fixing to tear up --  
19 they're fixing to tear up my "D" house.

20          Q.    Okay. So he was talking about that they  
21 were going to do some damage to his house if they  
22 remained inside?

23          A.    Yes, sir.

24          Q.    After Robert came back inside, what did  
25 you do?

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1           A.    I think I started to playing the radio  
2           again, I believe. Considering that we were  
3           listening to a CD.

4           Q.    What did Robert do after he came back  
5           inside?

6           A.    I don't know. I don't know if he went to  
7           check on the baby or went to the bathroom or -- I  
8           don't know exactly what he did when he came back  
9           in.

10          Q.    Now, you told Mr. Durant that at some  
11          point in time, Robert got some type of rag or some  
12          type of dishcloth; is that correct?

13          A.    Uh-huh.

14          Q.    When did he do that?

15          A.    This was after we went out -- well, once  
16          I went back outside for the second time.

17          Q.    Okay. When did you go outside for the  
18          first time?

19          A.    The first time was when I went, I  
20          think -- I think I went to go get a CD out of the  
21          car --

22          Q.    Okay.

23          A.    -- if I'm not mistaken.

24          Q.    And this was before or after the tussling  
25          and everything went on between Jonathan Farrell and

212

1 Latoya Davis?

2 A. This was after.

3 Q. Okay. Now, a few moments ago, when  
4 Mr. Durant asked you about going outside for the  
5 first time, if I don't recall -- if I recall  
6 correctly, you told Mr. Durant that you went  
7 outside on the porch and you didn't see anything;  
8 is that correct?

9 A. Yes, sir.

10 Q. You did not mention to Mr. Durant that  
11 you got a CD. Did you, in fact, get a CD?

12 A. Yes, sir.

13 Q. Okay. And did you see Jonathan Farrell  
14 and Latoya Davis?

15 A. I don't recall seeing them, no.

16 Q. Did you ever hear anyone outside?

17 A. I can't say that I did.

18 Q. After -- what type of CD did you get? Do  
19 you recall?

20 A. I just brought the whole book in.

21 Q. Okay. And after you came back inside  
22 with the CD's, what did you do then?

23 A. I played the radio.

24 Q. Okay. And you said that Robert took this  
25 rag outside. How long were you back inside

213

1 listening to CD's before Robert went back outside  
2 with the rag?

3 A. I went out before Robert.

4 Q. I understand that. But I believe your  
5 testimony was that you went out to the car --

6 A. Uh-huh.

7 Q. -- that you got some CD's, that you came  
8 back into the house, and you started playing music.  
9 Now, at some point in time, you said that Robert  
10 took a rag outside; is that correct?

11 A. Yes, sir.

12 Q. When did that occur is what I'm asking?

13 A. Oh, when did he take the rag back out?

14 Q. Yes.

15 A. That was after I went outside for the  
16 second time..

17 Q. Okay. When did you go outside for the  
18 second time?

19 A. That's when I went to go use the  
20 restroom.

21 Q. Okay. So you went outside to use the  
22 restroom?

23 A. Yeah, because he was in at the time.

24 Q. When you went outside for the second  
25 time, did you see anything?

214

1 A. Not as soon as I hit the outside, no. I  
2 don't recall seeing --

3 Q. Well, at any time while you were outside?

4 A. Oh, the second time, did I see anything?

5 Q. Yes.

6 A. Yeah, the second time, yeah.

7 Q. What did you see?

8 A. First, I think I heard a noise. I think,  
9 if I'm not mistaken.

10 Q. And where was that noise coming from?

11 A. The street.

12 Q. The street?

13 A. Uh-huh.

14 Q. I'm going to show you what we've marked  
15 as State's Exhibit No. 42. This little button  
16 makes a red dot on here. I want you to take that  
17 and show me where you heard the noise out on the  
18 street?

19 A. Right here?

20 Q. Uh-huh, where it says laser. Point it at  
21 the screen there.

22 A. Are you saying where was I?

23 Q. Show me where you heard the noise coming  
24 from.

25 A. Right up in here.



215

1 Q. So it would have been directly in front  
2 of the house?

3 A. Yes, sir.

4 Q. Okay. Let me take that back.

5 A. (Witness complies.)

6 Q. Now, Mr. Watkins, how far is it from this  
7 house to this house?

8 A. Not that far.

9 Q. About thirty feet, give or take a few  
10 feet?

11 A. I really don't know the distance in  
12 walking.

13 Q. About the width of this courtroom, more  
14 or less?

15 A. It would be, probably.

16 Q. So somewhere you walked outside -- I'm  
17 standing about three quarters to the back of the  
18 courtroom -- some -- when you walked outside, you  
19 heard some noise coming from this general area; is  
20 that correct?

21 A. Uh-huh.

22 Q. Now, there are street lights on that  
23 street, is there not?

24 A. Yeah, there's a few.

25 Q. Did you see anything that was making that

216

1 noise?

2 A. Really I wasn't paying much attention to  
3 it, what was making it when I heard it.

4 Q. Did you ever see Latoya Davis and  
5 Jonathan Farrell out there?

6 A. Yes, I did.

7 Q. And where were they?

8 A. In the street. He was laying down.

9 Q. So he was laying down. Would it have  
10 been in this general area right here?

11 A. Yes, it was.

12 Q. Okay. When did Robert come back outside?

13 A. During that time.

14 Q. How did Robert know that Mr. Farrell  
15 needed a rag?

16 A. I suppose he seen him -- I guess he seen  
17 him when he first came out, I suppose.

18 Q. Well, how -- you said that you went out  
19 to the car --

20 A. Uh-huh.

21 Q. -- and that when you went out to the car,  
22 Robert Watkins had already come back inside,  
23 correct?

24 A. Uh-huh.

25 Q. And you went to the car, and you got your

217

1 CD player -- or your CD's. You came back inside  
2 and you sat down, had enough time to decide what CD  
3 you wanted to play, put some music on and started  
4 listening to it before you ever went back outside;  
5 is that correct?

6 A. Uh-huh.

7 Q. About how far -- what is the length of  
8 time between the first time that you went outside  
9 until the second time that you went outside?

10 A. I'm not sure.

11 Q. Well, would it be ten minutes?

12 A. It depends on how many songs I listened  
13 to at that time. I really don't remember exactly.

14 Q. But it wouldn't have been a matter of  
15 seconds, though, correct? If you had time to do  
16 all of those things, it would have taken at least a  
17 few minutes? Is that fair to say?

18 A. I wouldn't say that it took too long.

19 Q. Okay. So Robert had been in the house  
20 for a period of time. And then all of a sudden, he  
21 comes outside, knowing that Jonathan Farrell was  
22 bleeding and needed a rag. Is that what your  
23 testimony is?

24 A. Uh-huh.

25 Q. Now, what -- you said Jonathan Farrell

218

1 was lying in the street in this area. What was  
2 Latoya Davis doing?

3 A. What was she doing?

4 Q. Yes.

5 A. Well, at the time that I heard the noise,  
6 it was -- there was a board -- sounding like a  
7 board -- something hitting the street -- I can't  
8 say that it was a board -- but the sound of  
9 something hitting the street. That's when, you  
10 know, I looked up to see they had started back up  
11 again.

12 Q. So they were fighting again?

13 A. Well, she was pretty much kicking him.

14 Q. She was hitting him?

15 A. Uh-huh.

16 Q. And what happened then after you saw this  
17 happen?

18 A. Well, I tried to stop her from fighting  
19 with Mr. Farrell, trying to hit him, you know.

20 Q. And then what happened?

21 A. That's when Robert came on the outside.

22 Q. And did Robert give Mr. Farrell a rag?

23 A. Not right then.

24 Q. Not right then?

25 A. No.



219

1 Q. Now, how did you try to stop Latoya Davis  
2 from hitting him with this board? What did you do?

3 A. Stopped her from hitting him with the  
4 board.

5 Q. How did you stop him?

6 A. The only thing I did was grabbed her  
7 around the waist and, you know, restrained her.

8 Q. Were you able to successfully restrain  
9 her?

10 A. Not successfully. You know, I pulled her  
11 away for a moment.

12 Q. And then what did she do?

13 A. She went back at him.

14 Q. Did she hit him again --

15 A. I would say so.

16 Q. -- with the board?

17 A. I don't know if she hit him with the  
18 board again or did she hit him with the board or --

19 Q. Did you see -- how did she attack him  
20 that time that she broke away from you? What did  
21 she do? I want to know specifically.

22 A. I just remember her kicking him.

23 Q. Okay. So you remember the kicking  
24 portions of it?

25 A. Uh-huh.

220

1 Q. Then what happened?

2 A. I think that's when Robert came on the  
3 outside.

4 Q. Okay. After Robert came outside, what  
5 did she do?

6 A. Well, I think from there, he told her to  
7 go home and, you know, that's when he spoke to  
8 Mr. Farrell, I guess. I don't know what he told  
9 him. But Mr. Farrell got up --

10 Q. Did you go back in the house at that  
11 point?

12 A. Did I go back in the house?

13 Q. Yes.

14 A. No, not right then. That's when Robert  
15 got a rag and gave it to him.

16 Q. Did you urinate on him during this time?

17 A. I can't remember.

18 Q. Now, Mr. Watkins, you have testified now  
19 for about ten minutes with all of the details about  
20 what happened inside of that house prior to this  
21 occasion --

22 A. Well, actually --

23 Q. Now, listen to my question. Okay? You  
24 talked about how she pulled the chair out, who went  
25 in, who went out, playing music, and all that sort

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1 of stuff. And you now say that you do not remember  
2 whether or not you urinated on this gentleman in  
3 the street. Is that your testimony?

4 A. Yes, sir.

5 Q. You're not denying that you urinated on  
6 him, are you?

7 A. No, I can't say that I'm denying it.

8 Q. After Robert gave him the rag, when did  
9 you go back inside?

10 A. I'm not sure if we went right back in or  
11 did we sit on the porch. I don't remember exactly  
12 what took, you know, place, word for word  
13 afterwards.

14 Q. What did you see Latoya Davis and  
15 Jonathan Farrell do after Robert gave him the rag?

16 A. I think they separated, if I'm not  
17 mistaken.

18 Q. So they both left; is that correct?

19 A. Latoya left at the time.

20 Q. What did John do?

21 A. I don't remember. It's not like I was  
22 standing up there watching the whole time what was  
23 going on.

24 Q. When you went back in the house, where  
25 was Jonathan Farrell?



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1 A. Well, he wasn't in the house.

2 Q. Was he in the street?

3 A. Like I say, I don't know exactly where he  
4 was when I went back in the house.

5 Q. Did you ever see Jonathan Farrell in this  
6 area of Keystone Street?

7 A. No.

8 Q. Did you ever walk down to this area of  
9 Keystone Street after this confrontation started?

10 A. Not that I remember, no.

11 Q. So you don't remember that either?

12 A. I don't remember going down there.

13 Q. You're not denying that you went down  
14 there? You're just saying that you don't remember;  
15 is that correct?

16 A. I didn't go down there.

17 Q. Okay. So you're emphatically denying  
18 that you never went to this area of Keystone --

19 A. No, I didn't go.

20 Q. Did you ever hear any gunshots that  
21 night?

22 A. No, I can't remember hearing any, no.

23 Q. You done remember hearing any?

24 A. Huh-uh.

25 Q. Did you ever see someone with a gun at

1223

1 any point in time during that night?

2 A. No, I didn't.

3 Q. So you never saw Robert Watkins with a  
4 gun?

5 A. No.

6 Q. You never saw Latoya Davis with a gun?

7 A. No, sir, I didn't.

8 Q. Did you ever see Jonathan Farrell with a  
9 gun?

10 A. No, sir, I didn't.

11 Q. Now, David, I'm going to direct your  
12 attention back to the police department, okay? You  
13 said that the pre-interview, where the detectives  
14 discussed what was going to be happening as far as  
15 the statement went and the facts of the case,  
16 lasted somewhere between fifteen and twenty  
17 minutes; is that correct?

18 A. If I'm not mistaken.

19 Q. And you saw the video yesterday. Was  
20 that you on that video?

21 A. Yeah, I saw the video. And to be  
22 truthful about the whole thing, if I was to look at  
23 that and see it, if it had not been for that video,  
24 I wouldn't believe that I said a lot of those  
25 things that were mentioned on the video.

224

1 Q. But that was you on that video, was it  
2 not?

3 A. Yeah, that was me.

4 Q. Do you remember giving that statement?

5 A. Huh-uh, not exactly.

6 Q. Do you ever remember being in that  
7 interview room?

8 A. Yeah, I remember being there.

9 Q. And you're saying -- your testimony is  
10 that you do not recall any of the things that you  
11 testified to on video yesterday?

12 A. I remember partly, certain things.

13 Q. What do you remember about that  
14 statement? What parts do you remember?

15 A. Well, from viewing the video and looking  
16 at it again, I can say that a lot of things that I  
17 spoke, I remember repeating a lot of things that  
18 were told to me from the officers, I remember that.

19 Q. So you do remember portions of the video  
20 statement; is that correct?

21 A. Portions.

22 Q. Well, Mr. Watkins, let me ask you this.  
23 How would you have been able to provide  
24 Detective Loria and Detective Kennedy with all of  
25 the details that all of these ladies and gentlemen

225

1 of the jury heard yesterday coming from you on that  
2 video, how could you have provided those details if  
3 you say that you never went to this area of  
4 Keystone Street?

5 A. As I was saying, he gave me -- he spoke  
6 to me before the video, so I -- I can't say that,  
7 you know, I didn't remember a lot of things that he  
8 told me at that time. And, as I said, I remember  
9 quoting a lot of things that he had already told  
10 me. I remember saying that, you know, quoting him.

11 Q. So what you're telling these jurors, that  
12 in a matter of time, fifteen to twenty minutes,  
13 Detective Loria and Detective Kennedy were able to  
14 put all of that into your head for you to memorize  
15 so you could regurgitate it back out on the video?

16 A. Well, actually, they spoke to me from the  
17 time we left the house, after they put me in the  
18 car. They was talking to me from the ride from the  
19 house all the way up to the police station. And  
20 from there, they gave me -- they also spoke to me  
21 once again once we got on the inside.

22 Q. Now, Mr. Watkins, you said that when  
23 Detective Loria -- or I'm sorry. I'll withdraw  
24 that portion.

25 You said a detective came in and started

226

1 speaking with you in the pre-interview and told you  
2 that he was not going to believe anything you said;  
3 is that correct?

4 A. Yes, sir.

5 Q. So you remember that happening?

6 A. I remember him telling me -- there was a  
7 lot of things that he told me. But that's one in  
8 particular that I remember.

9 Q. So your testimony would be that the  
10 detective told you, before ever even speaking with  
11 you, if you completely confess to this crime in  
12 doing it all by yourself, he wasn't going to  
13 believe you?

14 A. I ain't saying all that now.

15 Q. Well, you said that he told you from the  
16 beginning that he wasn't going to believe anything  
17 you said. He didn't know what you were going to  
18 say. Is that not true?

19 A. Well, actually -- he actually told me  
20 before -- before he even spoke to me, you know, he  
21 said that he didn't believe the story, something  
22 about what Robert had told him. And he said  
23 something about if I expected him to take my -- you  
24 know, me and Robert's statement over Latoya's, I  
25 could forgot it, you know.

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1 Q. So he made a reference to your and  
2 Robert's statement?

3 A. Yes, sir.

4 Q. So before he even spoke to you, he was  
5 assuming that your statement was going to be  
6 identical, if not the exact same, as  
7 Robert Watkins'?

8 A. Yes, sir.

9 Q. Let me ask you this question,  
10 Mr. Watkins. When your attorney was asking you  
11 questions earlier today, you were talking about the  
12 telephone calls that you received coming to the  
13 house?

14 A. Uh-huh.

15 Q. I believe Mr. Durant may have cut you  
16 off. But you said that you received a telephone  
17 call from David Watkins after you received a call  
18 from the detectives. Is that true?

19 A. Say that again. Repeat that again,  
20 because it sounded like you --

21 Q. I believe you told your attorney, first  
22 of all, that you received a call from the police  
23 department and they told you that you were a  
24 suspect in either a murder or capital murder  
25 investigation. Is that true?

1 A. Uh-huh.

2 Q. You also told your attorney that after  
3 that happened David Watkins called you; is that  
4 correct?

5 A. No, that's not.

6 Q. So you did not tell Mr. Durant that  
7 David Watkins called you that afternoon?

8 A. No, I didn't.

9 Q. So let me get this -- this portion of it  
10 correct. Did the PD call you and tell you that you  
11 were a suspect in a murder investigation?

12 A. You said a PD?

13 Q. Or someone from the police department?

14 A. Yes.

15 Q. After that occurred, did your cousin,  
16 Robert, did he call you after you received the call  
17 from the police department?

18 A. I can't be exactly specific of who called  
19 first. But I got a phone call from both of them,  
20 yes, I did.

21 Q. Was it about the same time?

22 A. No, it was separate.

23 Q. How much time varied between those  
24 telephone calls?

25 A. I'm not sure. At the time, I was

1 babysitting also, so --

2 Q. Well, if you can't remember which one  
3 came first, wouldn't it be fair to say that they  
4 probably occurred about the same time.

5 MR. DURANT: Asked and answered. He  
6 said he can't remember.

7 THE COURT: I'm sorry. I'm going to  
8 overrule your objection. I think it is a compound.  
9 Would you rephrase it?

10 MR. KIDD: I'll withdraw the  
11 question, Your Honor.

12 Q. Mr. Watkins, how long did Robert Watkins  
13 talk to you on the telephone?

14 A. It wasn't long.

15 Q. Where was he calling you from?

16 A. The police department.

17 MR. KIDD: No further questions.

18 MR. DURANT: I don't have any  
19 further questions, Judge.

20 THE COURT: Okay. You can step  
21 down.

22 (Witness excused.)

23 THE COURT: Do you have any other  
24 witnesses?

25 MR. DURANT: No, Judge. Defense



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1 rests.

2 THE COURT: Are you going to have  
3 any rebuttal?

4 MR. KIDD: No, ma'am.

5 THE COURT: Do y'all need a moment  
6 to get things ready?

7 (Attorneys nod.)

8 THE COURT: Both sides, at this  
9 time, have arrested, and the attorneys are going to  
10 address you in closing argument. But I think they  
11 may need to get some of the exhibits together, and  
12 I'm going to give you a ten-minute recess. Then  
13 when you come back, they'll argue, and I'll charge  
14 you.

15 (Out of the presence of the jury.)

16 THE COURT: And, Mr. Durant, do you  
17 renew your motions?

18 MR. DURANT: Yes, Judge.

19 THE COURT: And, again, I think a  
20 jury question is presented, and I'm going to deny  
21 your motion.

22 (Brief recess was taken.)

23 (In the presence of the jury.)

24 THE COURT: Okay. At this time, are  
25 you ready for closing?

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1 MR. POWELL: We are, Your Honor.

2 May it please the Court, counsel, members of  
3 the jury? We're at the end of the trial now, and  
4 you've heard all the evidence. And we're here  
5 today because they found Jonathan Christopher  
6 Farrell, this woman's son, lying in a ditch at the  
7 end of Keystone Street. He was found in a kneeling  
8 position. And statements taken from the defendant  
9 indicate that the entire time through this  
10 altercation and kicking and the fight and  
11 everything else that happened, the victim was  
12 begging for his life, begging for someone just to  
13 let him go and take him home.

14 So we're left to answer the question of who is  
15 responsible for doing this to Jonathan Farrell.  
16 And that's a good point in this case to look at the  
17 law. Now, as jurors, you're responsible for  
18 determining what the facts are in this case. And  
19 at the end of the closing arguments, Judge Greenhaw  
20 is going to tell you what the law is. And in this  
21 case, the defendant is charged with murder, the  
22 intentional murder of the defendant.

23 And I'll be the first to tell you that we  
24 cannot prove that that defendant was the one who  
25 put the gun to that young man's head and pulled the

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1 trigger. But we don't have to prove that. What we  
2 have to prove is that this man did something to aid  
3 and abet this murder. And Judge Greenhaw is going  
4 to tell you, when she instructs you on the law,  
5 that there are several ways that you can aid and  
6 abet someone in committing a crime.

7 In the past, there have been discussions of  
8 principles and accessories and who did what and  
9 this did what. The Judge is going to tell you that  
10 that distinction doesn't exist anymore. The person  
11 who put the gun to his head may be the principle or  
12 the person involved, but we don't have to tell you  
13 who was the principle and who were the accessories.  
14 We just have to show you that the people that were  
15 there surrounding this murder, including this  
16 defendant, did something to aid and abet. And the  
17 Judge is going to tell you that ways they can do  
18 that is by acts, words of encouragement, support,  
19 or presence. These are all ways someone can aid  
20 and abet.

21 Now, just to be clear, mere presence is not  
22 enough, and I think the Judge is going to tell you  
23 that simply being there is not enough. You have to  
24 do something in support or words of encouragement  
25 or by acts. So if we've convinced you that this

1 defendant either through his acts, his words, or  
2 his support went along with this murder, he is just  
3 as guilty as the person who pulled the trigger.

4 Judge Greenhaw is also going to tell you about  
5 co-conspirators, people who are commonly engaged in  
6 unlawful activity. And if they are engaged in a  
7 common scheme or plan and it gets carried out, then  
8 each person involved is just as guilty of all the  
9 rest for whatever happens. And we think that here  
10 today this is the situation that Mr. Watkins put  
11 himself in on that night back in October in 1999.

12 Now, how do we know this? How do we know that  
13 David Watkins is guilty of murder because he aided  
14 and abetted or was a co-conspirator? We know this  
15 by his own confession. He gave a statement to the  
16 police, where in that statement, all of these  
17 elements come out. Then it becomes a confession  
18 when he admits that he did acts and words and  
19 things to support and go along with this murder,  
20 that's a confession. And we'll go through the  
21 defendant's confession, and I'll demonstrate to you  
22 how by his acts and words and support, he's guilty  
23 of this crime.

24 In this case, the defendant testified. Let's  
25 talk about that for just a second right here. The

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1 defendant took that witness stand and said on the  
2 night I gave my confession, I had been drinking and  
3 spoking marijuana, and I don't really remember what  
4 I said. You saw him on the videotape. You saw  
5 Detective Loria read him his miranda form. At any  
6 point, he could have said I don't want to talk. At  
7 any point, he could have said, I want a lawyer. He  
8 didn't do that. He agreed to talk.

9 Now, you can also look at what he said and  
10 what he was talking about. In his videotape, he  
11 was understanding to Detective Loria's questions.  
12 He was responding to the questions. Now, granted,  
13 we all heard how mumbled and muffled it was, but is  
14 that an indication that he didn't know what was  
15 going on or he was too stunned or high? He knew  
16 what was going on on that case. He knew why he was  
17 there. He knew the questions he was being asked.  
18 And he signed a form saying he understood that he  
19 did not have to speak with them if he did not want  
20 to. And he was voluntarily giving this statement.

21 Now, when you're considering what weight to  
22 give the defendant's statement, he also said a  
23 couple more things from that witness stand. And I  
24 wrote them down, because I didn't want anyone to  
25 miss them now. Now, this is my understanding of

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1 it -- and you heard the testimony, so you can tell  
2 me if I'm listening to it right. But his attorney  
3 was asking questions on direct examination and what  
4 his responses were. There were a lot of things I  
5 said that I shouldn't have been said to begin with  
6 in that statement. Well, that's true enough,  
7 because in that statement, he convicts himself of  
8 murder. And then, finally, on cross-examination,  
9 he said, I wouldn't believe I said a lot of those  
10 things I said on that video if he hadn't have sat  
11 here in the courtroom and watched it today.  
12 Because, basically, in that statement, he tells you  
13 what happened. He tells you everything that  
14 happened. He tells you about kicking them,  
15 urinating on them, talking about killing him,  
16 someone had a gun. It was offered to him first.  
17 And then he sits up on the witness stand and he  
18 says I can remember we were playing cards. I can  
19 remember who was sitting where. I can remember I  
20 went out to the car to get CD's. I can remember  
21 how many hands of cards we played. I think it was  
22 just one. I can remember all of these details,  
23 except the parts where he's involved. He doesn't  
24 remember urinating on him. He doesn't remember  
25 kicking him. He doesn't remember walking down to

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1 the end of Keystone Street. So when you're going  
2 back in that jury room, the Judge is going to tell  
3 you, as finders of fact, you're to weigh the  
4 credibility of witnesses. And you can take into  
5 account, not only the testimony he gave from the  
6 witness stand, but also prior statements that he  
7 had given, and whether those are consistent. And  
8 factor all of that in when you're weighing whether  
9 to believe someone's testimony. Whether to believe  
10 what was in his statement to the police was closer  
11 to the truth or whether to believe what he said  
12 from the witness stand, that he doesn't remember  
13 anything and he didn't do nothing.

14 Now, that we've talked about his statement,  
15 and him giving a statement to the police, let's  
16 look at the statement. Now, you saw the videotape  
17 of the statement and we tried to play you the best  
18 tape recording of it we had that we could.  
19 Technology is not everything we would like it to  
20 be. We wish we could play it through some space  
21 age thing and get them to do magical things to it  
22 so we could hear everything that happened in the  
23 statement. The best we got is what we offered into  
24 evidence. And when you go back in that jury room,  
25 as finders of fact, part of your job is to

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1 determine what was said on that statement. I  
2 encourage you to listen to it. Listen to it  
3 closely. But what I'm going to show you now comes  
4 from what we've listened to on the statement and  
5 this is what we believe the defendant to be saying  
6 from our view of the statement. Again, as finders  
7 of fact, you can tell us -- you can agree with us  
8 or you can disagree with us or you can -- you can  
9 determine what was actually said on this tape. But  
10 let's start with the defendant's statement.

11 Question: Okay. Answer: Once he got there,  
12 I urinated on him. I took a leak on him for no  
13 reason whatsoever. Question: All right. Was this  
14 before or after you kicked him?

15 It was before I kicked him. Question: Was  
16 this before or after Robert picked him up and threw  
17 him down on to the ground? Answer: It was after.  
18 I don't know if he dropped him on the head. I  
19 don't know. When I came outside, his head was  
20 bleeding, and that's when I took a leak on him.

21 This is where the defendant confesses to  
22 urinating and kicking the victim during the  
23 altercation. I think we all heard that from the  
24 statement, so we won't dwell on that.

25 THE COURT: Come up here just a



1 minute.

2 (Bench conference was held.)

3 MR. POWELL: Again, if you continue  
4 to go through the defendant's statement, Question:  
5 How did he get to the end of the street? Answer:  
6 He pretty much got up on his own. Question: And  
7 he walked --

8 THE COURT: Come up here,  
9 Mr. Powell.

10 (Bench conference was held.)

11 MR. POWELL: There was another  
12 portion of the statement where Sergeant Loria asked  
13 him, Well, if you and Latoya urinated on him, how  
14 did you pick him up and carry him to the end of the  
15 street? In the statement, the defendant says,  
16 basically he got up and he staggered around and he  
17 walked down to the end of the street where the  
18 church was. Play back the portion of the tape,  
19 listen to it for yourself. In that portion of the  
20 tape, he says, that after they got done hitting him  
21 and kicking him, they walked down to the end of the  
22 street.

23 There's another portion of the statement where  
24 Sergeant Loria asked the defendant who hit him over  
25 the end with the board. The defendant responds,

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1 Toya did. There's a portion of the statement where  
2 Sergeant Loria goes, Well, you saw this? And the  
3 defendant's response is I saw this. And then the  
4 defendant talks about how he tried to stop her. He  
5 even said the same thing on the witness stand. He  
6 said he went over to her and grabbed her around the  
7 waist. In his statement, he also says that when he  
8 grabbed her, she dropped the board. And he also  
9 says in his statement that she was persistent. She  
10 kept on. So since she was persistent, he says in  
11 his statement, if you'll listen for it, I told her  
12 to do it. Just do it. And then she went on and  
13 did it, because she was going to do it any way. If  
14 you'll listen, that's in the statement.

15 Basically, the defendant is telling Toya, if  
16 you're going to hit him, go ahead and hit him.

17 MR. DURANT: Judge, may we approach?

18 THE COURT: Yes.

19 (Bench conference being held.)

20 MR. DURANT: Judge, I know that you  
21 have admonished Mr. Powell not to use the actual  
22 statement in addressing the jury. But in the fact  
23 he's still doing the same thing --

24 THE COURT: He can argue, but he  
25 cannot -- (inaudible.)

1 MR. DURANT: Well, he is constan  
2 referring to that, Judge.

3 THE COURT: Just refer to your  
4 notes.

5 (In the hearing of the jury.)

6 MR. POWELL: If you continue  
7 listening to the statement, you'll come to a point  
8 where Sergeant Loria asked him, Why didn't you help  
9 him? He was begging Robert for his life, why  
10 didn't you help him? And if you'll listen to the  
11 defendant's response, he responds, He never begged  
12 me. If you continue on through his statement --

13 MR. DURANT: Judge, we object again.  
14 May we approach?

15 MR. POWELL: I'm -- I'm not reading.  
16 (Bench conference was held.)

17 MR. POWELL: Then we get to the most  
18 critical portion of the statement. There comes a  
19 point where Detective Kennedy asked him -- and  
20 Junior said -- and before she can finish her  
21 question, the defendant starts talking. And I'm  
22 going to play that portion of the videotape  
23 statement for you again.

24 (Taped statement played again. )

25 MR. DURANT: Judge, we're going to

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1 object to this also.

2 THE COURT: Overruled.

3 MR. POWELL: Before we continue,  
4 listen to this portion of the tape very closely.  
5 It says that they were walking down there. And as  
6 they were walking, they were talking about killing  
7 him. Then they back up and they said, Whose idea  
8 was it? They say, It was Toya's. Toya said,  
9 Robert, you need to kill him because he knows where  
10 you stay.

11 (Tape being played again. )

12 (Videotape stopped.)

13 MR. POWELL: Thinking about what she  
14 said -- she being Latoya, Robert, you need to kill  
15 him. He knows where you stay. Sergeant Loria is  
16 asking the defendant, After you started thinking  
17 about what she said, what did you say next?

18 (Videotape being played again.)

19 (Videotape stopped.)

20 MR. POWELL: I told him to do it.

21 (Videotape being played again.)

22 (Videotape stopped.)

23 MR. POWELL: Standing on the porch.

24 Mike, can you just pull up the general crime  
25 scene?

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1 (Attorney complies.)

2 MR. POWELL: Now, if you'll review  
3 the defendant's statement -- particularly this  
4 portion I'm referring to. There's a portion where  
5 they talk about we were walking down there and we  
6 were talking about killing him. And I said I  
7 couldn't do it. Following that, there's a portion  
8 where Toya said you ought to kill him. He knows  
9 where you stay. And he says, Where did y'all have  
10 that conversation? The defendant says, On the  
11 porch.

12 Now, go back previously in the statement.  
13 After y'all urinated on him, how did you carry him  
14 down to the ditch? Well, he got up on his own and  
15 walked -- pretty much walked down to the ditch.  
16 Based upon the defendant's own statements, after  
17 they beat him and after they kicked him and after  
18 they urinated on him, Mr. Farrell got up and tried  
19 to walk off. Based on the defendant's own  
20 statements, him and Robert and Latoya were standing  
21 on the porch. Latoya had already said you're going  
22 to have to kill him because he knows where you  
23 stay. They were standing on the porch on 659  
24 Keystone Street. When he thought about what she  
25 said -- and this defendant told Robert Watkins, Do

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1 it. Told who to do it? Junior. You told Junior  
2 to shoot him? I told him to do it.

3 Members of the jury, by acts, urinating,  
4 kicking the victim, by words of encouragement, I  
5 told him to do it. At that point, they walked from  
6 659 Keystone to this area right here. Where,  
7 according to the defendant's own words, the victim  
8 had walked. And the evidence is undisputed -- it's  
9 undisputable that the victim was found --  
10 Mr. Farrell was found in that ditch.

11 That is the evidence in this case that comes  
12 from the defendant's own statement. That's why  
13 that statement -- the statement you saw the  
14 videotape of and the statement that you can go back  
15 in that jury room and watch and listen to. He  
16 talks about urinating on the victim, kicking the  
17 victim. They talk about discussing killing the  
18 victim on the porch of that residence. This  
19 defendant decides he's going to go along with the  
20 other two defendants while they walk down to the  
21 end of that street, and then his statement to the  
22 police, he describes how the victim got shot.  
23 That's evidence that this defendant was down at the  
24 end of that street too. All throughout his  
25 statement, he says I heard gunshots while we were

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1 trying to walk back, while we were trying to walk  
2 back. He was down there at the end of Keystone  
3 Street.

4 Now, members of the jury, again, I'll be the  
5 first to tell you, we have not proven and cannot  
6 prove that the gun that killed Jonathan Farrell was  
7 in this man's hand. But when you're engaged in an  
8 altercation, an argument over a game of cards, this  
9 murder was senseless and spilled out into the  
10 street. This defendant kicked John Farrell. He  
11 urinated on him. Those are acts -- acts with an  
12 indication that he's willing to aid and abet  
13 whatever happens to this young man. Then it  
14 escalates. You've got to kill him. He know where  
15 you stay. This defendant went along with it from  
16 the porch all the way down Keystone Street. He  
17 encouraged it through his words. And he supported  
18 it by his act and presence.

19 When you go back in that jury room, listen to  
20 the defendant's statement, and you will see that  
21 David Watkins is guilty of his role and  
22 participation in this brutal beating and delegation  
23 and humiliation and eventual murder of another  
24 human being, Jonathan Farrell.

25 And we would ask you, after hearing the

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1 State's evidence in this case, to take the  
2 defendant's own words and convict him of this  
3 murder that he was so tangled up in. Thank you.

4 THE COURT: Mr. Durant?

5 MR. DURANT: May it please the  
6 Court, counsel?

7 I believe in my opening statement, I asked you  
8 not to be guided by your sympathy. And when I say  
9 not to be guided by sympathy, I think any time  
10 anyone is killed -- it is -- this is a tragedy,  
11 make no mistake about it. Don't take my remarks as  
12 condoning. Whatever happened to Mr. Farrell, I  
13 commensurate with his family. I do, because it's a  
14 another life.

15 But I told you -- I told you at my opening  
16 statement that you shouldn't be guided or  
17 controlled by sympathy or sensationalism. The  
18 prosecution, they have a very impressive graphic,  
19 and you had the opportunity to repeat --  
20 repetitious -- repetitive manner see sadly the body  
21 of Mr. Farrell over and over again, so it's --  
22 after a while, it becomes part of your psyche and  
23 you might very well say somebody has to pay for  
24 this. But, like I said, it's despicable. It's  
25 reprehensible. But, they have to have the right



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1 person. They have to prove beyond a reasonable  
2 doubt. That doesn't excuse them as laurent, as  
3 awful as it might have been, they still have to  
4 prove their case beyond a reasonable doubt.

5 And what I told you yesterday in opening  
6 statement, presumption of innocence -- the  
7 presumption of innocence that Mr. -- that the  
8 constitution gives Mr. Watkins follows him right  
9 into the jury deliberation room until you have  
10 found otherwise.

11 Now, you've heard a lot -- you've seen -- you  
12 have seen -- there's been display over and over to  
13 you again -- and I don't mean to be redundant, but  
14 it's true -- it's been displayed over and over  
15 again. But I'm asking you just not to be swayed by  
16 that. The fact that, you know, here is this body,  
17 it's a morbid scene, you know, it is. But you must  
18 be convinced, each one of you -- each one of you  
19 must be convinced that Mr. David Watkins  
20 participated in this trial.

21 You know, as Mr. Powell enunciated the law,  
22 aiding and abetting, co-conspirators, all of that  
23 is true, it's a correct statement of the law. But  
24 I often -- I can't help but think that they're  
25 wanted in every way. Who the shooter might be.

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1 Not sure who the shooter might be. There are three  
2 people charged in this case. It could be anybody.  
3 But since we can't place the gun -- the gun has  
4 never been found, no fingerprints, nothing has been  
5 proven in this case to connect, other than, as they  
6 say, his words, to connect Mr. Watkins to this  
7 crime. But they're wanted in every way. They  
8 want -- well, if we can't get him -- since we can't  
9 prove that he had the gun, since we can't prove he  
10 fired the gun, he aided and abetted, he gave  
11 encouragement by words and by acts.

12 Is this -- this offense happened on the 18th  
13 or of the early morning 19th, maybe, and  
14 Mr. Watkins was picked up on the 21st. Now, some  
15 of you might give much credence to what I'm about  
16 to say. But, he was picked up, and he told you --  
17 he told you when he was picked up how he was picked  
18 up. You know, I'm not saying there was anything  
19 brutal about it, but that's police procedure, pick  
20 him up, pull out the gun -- it's a murder  
21 suspect -- pull out the gun, put the bottle down,  
22 put the phone down.

23 Okay. And you heard me -- you heard me ask  
24 Officer Loria whether he was intoxicated. He said,  
25 No, he wasn't intoxicated. I said, Did he tell you

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1 he was intoxicated? Well, you're going to find in  
2 there what is called a forensic report, and a  
3 forensic report is checked off. He said, No. And  
4 it is signed by him. It is signed by him. Prior  
5 to that report, he had said no. Now, you know, I  
6 have to question -- I have to question the  
7 officer's motives. I have to. You saw -- you saw  
8 the video. And, you know, whatever I might feel  
9 about it is what you feel that is going to be  
10 important here. But you saw the video. You saw  
11 David Watkins being interrogated. And I use the  
12 word interrogated purposely as opposed to being  
13 questioned. You saw him being interrogated. Do  
14 you have any questions as to whether it was heavy  
15 handed? Do you have any question as to whether it  
16 was oppressive? You saw him sitting there in the  
17 video. He said he had been drinking and he had  
18 been smoking on that same -- I'm not trying to tell  
19 you, okay, that should excuse everything -- but  
20 when you are questioning a suspect, and that  
21 suspect might be impaired, it goes directly to what  
22 that person is telling you -- directly to what that  
23 person is telling you. That's all I'm saying. And  
24 he said, there was -- that's standard procedure.  
25 They talk to you. You know, they play each

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1 defendant off against each other. They'll do it.  
2 They do it all the time.

3 What this person said, so it's not farfetched  
4 when David Watkins gets up here and tells you,  
5 well, he had told me, and I just repeated -- they  
6 tell you. You know, it's -- you know, I'm not  
7 saying that it's a direct replicable of what  
8 happens in the real courtroom, but you see it on  
9 television all the time, the topics --

10 MR. KIDD: Judge, I'll object.

11 THE COURT: Sustained.

12 MR. DURANT: But, you know, they --  
13 Robert Watkins called David Watkins. He testified  
14 to that. He said they called. He could not tell  
15 that -- the time difference, but he said I got a  
16 call from an officer, and I got a call from  
17 David Watkins -- Robert Watkins. Robert Watkins  
18 was up at headquarters being questioned and called  
19 David Watkins, and says, Hey, this is what is  
20 happening.

21 The officer listening to the conversation --

22 MR. KIDD: Judge, I'll object.

23 There's no --

24 THE COURT: I'm sure that the jurors  
25 will recall what is and what is not evidence. You

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1 can respond. Overrule.

2 MR. DURANT: And that's the context  
3 that we're dealing here. It's not a -- it's pretty  
4 complicated, ladies and gentlemen of the jury. You  
5 saw him on the videotape. And you saw him testify  
6 here today. And you can make your minds up, each  
7 one of you can make your minds up as to the  
8 difference in his testimony here today and the  
9 difference in the videotape.

10 The officer had to ask him several times, do  
11 you want to cooperate? He says -- you know, say  
12 the same thing that I said in the pre-interview.  
13 As I said, it not farfetched that David Watkins  
14 would regurgitate some of this. He said that he  
15 had been drinking and he had been smoking from the  
16 time he got off of work for some four hours.

17 I think -- I think it's feasible for somebody  
18 to have been drinking and somebody to have been  
19 smoking and for them to -- for that individual to  
20 answer certain questions. That might very well  
21 appear like that person knows what he's saying.  
22 But you saw it. You saw the video. You saw the  
23 officer stop several times. In fact, one time and  
24 then the top of his voice asking somebody whether  
25 he could hear it? You heard the officer say it,

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1 you want to continue this? And the defendant said,  
2 No, not really -- something to that effect. And  
3 the officer continued. And he continued to provide  
4 answers.

5 It is our position, ladies and gentlemen of  
6 the jury, that Mr. Watkins did not aid or abet. If  
7 you believe that Mr. Watkins' statement is a  
8 statement given under duress or impairment, you  
9 have to take that into consideration. Did Mr. --  
10 was Mr. Watkins fully aware of what he was saying?  
11 Was all of his faculties intact that he could make  
12 the statements that he was making?

13 I think -- I think you can listen to some of  
14 the questions, and you can see that some of them  
15 were suggested. And Mr. Watkins said, Yes, I told  
16 them so and so. I think it's clear that they were  
17 suggested. And I think it was clear. You saw it.  
18 You might not agree with me, but I think it was  
19 clear that the questioning was heavy-handed.

20 Now, you might say that that is something that  
21 police have to do. But when someone has indicated  
22 to you that they are impaired, and that they've  
23 been drinking and smoking, I think there's  
24 something you need to take into consideration and  
25 say, Well, listen, I'm going to wait for a couple

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1 of hours or whatever it takes. You don't have to  
2 question them right there and then. They are at  
3 police headquarters, they aren't going anywhere.  
4 They made statements. They all made statements,  
5 and the officers were using those statements.

6 David Watkins testified that they were telling  
7 him what this person said and what that person  
8 didn't say. And how he was going to be implicated.  
9 And, again, I say it's not farfetched, people  
10 repeat -- they repeat. People are in a  
11 situation -- you saw -- you saw the interview room.  
12 You saw the officers. This is David Watkins and  
13 several officers. He has to deal with that. He  
14 has to answer their questions. Oh, they say you  
15 can stop any time you want to or you can have a  
16 lawyer any time you want to.

17 But David Watkins was trying to do anything  
18 that he could to please. After a while, those  
19 words, you can have a lawyer any time or you can  
20 stop any time you want to, and especially after  
21 you've had a pre-interview -- after you've had a  
22 pre-interview where these things are set out.

23 If the pre-interview does not meet with the  
24 officer's approval, there will be no videotaping of  
25 that -- of the defendant, or in this case, my

1 client.

2 As I said -- as I said to you before, they  
3 don't know who killed Mr. Farrell, and that's  
4 unfortunate, because that's a big dragnet. They're  
5 going to widen an umbrella, and that umbrella is  
6 going to include aiding and abetting,  
7 co-conspirators. I think it's not -- I don't think  
8 it's inconsistent. You saw it on the video. I  
9 don't think there's any inconsistency that a person  
10 has been drinking and a person has been smoking  
11 marijuana. I don't think it's inconsistent that a  
12 person -- that that person would make a statement  
13 that, Well, I -- I peed on him. But you think  
14 about it. Think about it.

15 And there's no evidence -- there is no  
16 evidence that has been presented here that, again,  
17 that from the medical examiner's office, from the  
18 forensic department that said that there was urine  
19 on Mr. Farrell. No evidence. None has been  
20 presented here. All of that has come back  
21 negative. No evidence. Yes, it was a such and  
22 such with such and such acidity, which I would -- I  
23 have determined to be urine. None of that has come  
24 back here.

25 Yeah, they'll say that his words implicated



1 him. But his words that you cannot trust because  
2 of the situation, the environment that he was in.  
3 Yeah, you saw it on the tape. We don't dispute  
4 that. But he said it on the stand. And remember  
5 what he said on the stand. He said, but for the  
6 fact that I see myself and I hear myself uttering  
7 those words, I would not believe -- I would not  
8 believe that I said those things. That's what he  
9 said.

10 Mr. Powell tried to make it more complicated  
11 than that, but it's -- is that uncomplicated? He  
12 said, but for the fact. Doesn't it sound like  
13 somebody after the night said, What? Did I say  
14 that? Did I do that? It's scary sometimes. Did I  
15 do that? Oh, man, I can't remember any of that.  
16 Wow, and the person said, Yes, you were saying A,  
17 B, C, and X, Y, Z. And you say, I can't remember  
18 that. That's what happens when you inhale or you  
19 imbibe alcohol. And, in this case, inhale  
20 marijuana. That's what -- it distorts -- it  
21 distorts not just your vision, but your mind and  
22 everything. And it's not anything -- and it's not  
23 anything complementary to my client, but the way  
24 these guys smoke, but you can't take that and hold  
25 that against him. This is murder. This is not

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1 smoking. He's not charged with marijuana  
2 possession. This is murder. But some folks smoke  
3 that stuff and it really affects their mind and  
4 their memory.

5 And, you know, if Mr. -- and I'm going to be  
6 through in a minute -- if Mr. Watkins said, I can't  
7 remember, not to my memory, he's -- let me just add  
8 one thing. He's doing the best he can getting up  
9 there and testifying. You know, he's not  
10 accustomed to doing that. He said that in the  
11 interview, he's not accustomed to doing that. He's  
12 not a person who is a witness in two hundred cases.

13 So, you know, if he's a little confused by the  
14 prosecution's steady stream of questions, don't  
15 hold it against him. He doesn't exactly have a BA  
16 and a PH degree. In fact, I'm being extreme. He  
17 hasn't even graduated from high school. So, you  
18 know, it's not that easy to get up there and deal  
19 with a prosecutor bombarding you with questions.

20 If you believe that the officer was fair and  
21 you believe everything that they said, then you  
22 find Mr. Watkins guilty, if you believe them. But  
23 if you believe that officers can be appestat  
24 sometime -- and not the entire police force, but  
25 you saw it.

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1 And I'm glad that they have the will to come  
2 in here and bring all these beautiful impressive  
3 graphics. I'm glad that they -- in fact, I'm a  
4 little envious. I can't afford it. So I'm doing  
5 the best I can do standing up here and talking to  
6 you. That's what I'm doing here today. Divorced  
7 of all graphics, but the graphics benefit us.  
8 Because you've been the beneficiaries of seeing  
9 Mr. Watkins. And if you can't -- don't think he  
10 was intimidated, well, then convict him, if you  
11 don't think he was intimidated and you don't think  
12 his statement was an involuntary statement.

13 But I'm asking you to open your mind -- each  
14 one of you to open your mind and deal with the  
15 realities. That's what I'm asking you, to deal  
16 with the realities. And if you deal with the  
17 realities, I know you'll come back with a verdict  
18 of not guilty for my client. Thank you.

19 THE COURT: Mr. Kidd, are you  
20 going --

21 MR. KIDD: If it pleases the Court,  
22 Mr. Durant?

23 Ladies and gentlemen, Mr. Durant made a  
24 reference to television. This isn't television.  
25 This is a real mother. She's not fictional. She

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1 had a real son. He's dead. This is a real  
2 defendant accused of doing things that I can't even  
3 imagine to a fellow human being. In his own words,  
4 for no reason at all. This is real. It's not  
5 fiction.

6 Mr. Durant went through a laundry list of  
7 things. He laid out an argument, You should acquit  
8 this defendant, because he's a drug user and he  
9 dropped out of high school. That's ridiculous.  
10 It's insulting.

11 Ladies and gentlemen, people have to accept  
12 responsibility. You saw the interview in your own  
13 eyes. You saw Detective Loria. You heard what he  
14 did. Ladies and gentlemen, he's not dealing with  
15 choir children. He's dealing with people that are  
16 street smart. He was fair. He read Mr. Watkins  
17 his rights, not once, but twice. You heard how he  
18 went through each individual one. Do you  
19 understand? If you understand, check here. If you  
20 don't understand, I'll explain it to you. Not only  
21 did he read them in his pre-interview, he went back  
22 over them on the videotape, another detective  
23 there.

24 Mr. Durant said, They brought him in. They  
25 coerced his statement. They knew he was drinking.

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1 They could have given him a couple hours to sober  
2 up before they talked to him, that's what  
3 Mr. Durant said. If they want to be fair, give him  
4 a couple of hours. Ladies and gentlemen, that's  
5 what they did. You put that video statement in.  
6 That statement started at 0038 hours, almost one  
7 a.m. This gentleman said he got to the PD between  
8 7:30 and 8:00. That's almost five hours for him to  
9 sober up. He wasn't intoxicated. You saw him.

10 Mr. Durant said he was under duress. He was  
11 under duress when he made that statement. He was  
12 under duress from the fact that he had a guilty  
13 conscience about what he had done to somebody for  
14 no reason at all. That's real duress. That's  
15 where the duress came from.

16 Ladies and gentlemen, what type of standard  
17 are we holding police officers to if you buy  
18 Mr. Durant's argument? What are they supposed to  
19 do, go give people sobriety tests before they take  
20 a statement? You heard about the years of  
21 experience that Sergeant Loria -- Sergeant, in  
22 charge, supervisor of homicide investigations for  
23 the City of Montgomery. Not only is it his job to  
24 investigate homicide, it's his job to make sure  
25 that everybody else under his supervision does it

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1 correctly. He knows how to do an interview  
2 correctly. And, ladies and gentlemen, that's what  
3 he did.

4 No better evidence than yourself to look at  
5 this and say, Well, was Sergeant Loria fair to this  
6 individual? Did David Watkins listen to questions?  
7 Did he appear to understand questions? And was he  
8 effectively able to communicate answers to Sergeant  
9 Loria? The answers to those questions are yes.  
10 David Watkins could have stopped that interview at  
11 any time he wanted to, but he didn't. He says, I  
12 can't believe I said those things. I can't believe  
13 I convicted myself of capital murder -- excuse  
14 me -- of intentional murder.

15 Ladies and gentlemen, I told you yesterday  
16 that this case was going to come in two phases. I  
17 told you that there would be evidence through a  
18 confession, and that that confession convicted  
19 David Watkins. That's what we heard yesterday.  
20 Everything you heard yesterday was about the  
21 confession. That's exactly the way I told you. I  
22 told you yesterday the State does not have to prove  
23 to you that David Watkins pulled that trigger.

24 Ladies and gentlemen, I don't know who pulled  
25 that trigger. The only person who really knows or

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1 the only people who really knows who pulled that  
2 trigger are those individuals that were there.  
3 Ladies and gentlemen, I'm not telling you that  
4 David Watkins didn't pull that trigger. I'm  
5 telling you what he told you in his statement.

6 His statement alone encompasses every single  
7 element of aiding and abetting. In layman's terms,  
8 aiding and abetting can be referred to as the three  
9 musketeer statute. We're all for one, and we're  
10 all for one. We're in this boat together. If it  
11 goes down, we all go down. Responsibility on  
12 others' actions.

13 David Watkins says that he acted by kicking,  
14 by urinating. He acted by encouraging the  
15 shooting. All of those things show that he aids  
16 and abets. That came from David Watkins' own  
17 mouth. Who better to believe?.

18 But, ladies and gentlemen, there's more than  
19 just his statement to this case. Today, we went  
20 through the physical evidence. The physical  
21 evidence shows that there are some drastic  
22 inconsistencies with what David Watkins told you.  
23 The physical evidence indicates that David Watkins  
24 is not being truthful about what happened. He took  
25 the stand today. He remembered everything that

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1 happened before the shooting took place outside  
2 Keystone Street except for the portions that  
3 implicated himself, right down to where everybody  
4 was sitting down at the table. The exact same way  
5 that he remembered everything that happened at the  
6 police station up to the point where it came time  
7 for him to give his statement. He's medicated his  
8 involvement. He's not being truthful. And the  
9 Judge will tell you that if you believe he's not  
10 being truthful, you can completely disregard  
11 everything David Watkins said from the stand.

12 Ladies and gentlemen, the physical evidence  
13 shows that there was one shell casing found in that  
14 ditch. The physical evidence shows from the  
15 photographs there was brown dirt -- a dirt pile  
16 very close to where the body was found. I want you  
17 to go back in the jury room. I want you to take a  
18 close look at State's 13. I'm not showing you this  
19 picture to gross you out to try to involve some  
20 type of emotional confrontation inside. I'm  
21 showing you this for a reason. I want you to look  
22 at the top of his head. What do you see? You see  
23 dirt, not just regular dirt, but brown dirt. I  
24 submit to you, the same type of dirt that was found  
25 on that dirt pile. Go back. Look at State's 26.



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1 Pass it around among yourselves. What do you see  
2 on his face? Dirt. The same type of dirt that was  
3 on the back of his head.

4 And, finally, look at State's 27, down his --

5 MR. DURANT: Judge, we object.

6 There was no evidence concerning dirt and --

7 THE COURT: Again, I think the jury  
8 will recall. I don't recall.

9 MR. KIDD: You can look. It's on  
10 the picture, ladies and gentlemen, decide for  
11 yourself. You can see in Page 27, there's dirt all  
12 on the side of his face. Look at the crime scene  
13 video. On the back of his shirt -- jacket, dirt on  
14 his back. What did Dr. Lauridson say?

15 Dr. Lauridson said that there were abrasion type  
16 injuries to his face, to his knees, to his elbow,  
17 pretty much the entire length of his body.

18 Now, Mr. Durant asked Dr. Lauridson, Could  
19 that be consistent with someone tripping and  
20 falling? Sure, it could be. But to get that many  
21 injuries in that many locations, you would have had  
22 to trip and fall several times. What else did  
23 Dr. Lauridson say? Dr. Lauridson, are those type  
24 of injuries consistent with someone being drug? He  
25 said, Yes, they are consistent with someone being

1 drug.

2 Ladies and gentlemen, I submit to you that  
3 Jonathan Farrell did not walk into that ditch. Day  
4 Street was only a matter of yards from where his  
5 initial confrontation -- confrontation took place.  
6 He ended up almost two hundred yards in the  
7 opposite direction. I submit to you that the  
8 physical evidence shows that he had some help  
9 getting to where he ended up. And, ladies and  
10 gentlemen, this gentleman here wants you to believe  
11 that a fifteen-year-old girl could have gotten that  
12 individual down in that ditch by herself.

13 Ladies and gentlemen, the physical evidence  
14 tells a different story. The physical evidence  
15 tells you that there were two gunshots, and that  
16 they came in different directions. You saw the  
17 defendant. He's on his knees.- If you believe that  
18 those gunshots came in succession as the defendant  
19 said, the -- one of the gunshots came from this  
20 direction here. That means that the shooter would  
21 have had to have shot, then walked all the way  
22 around to the other side while he was still on his  
23 knees and shot again. And there would have been  
24 two shell casings in that ditch. There weren't.  
25 There was one. I submit to you that that tells you

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1 that there was another gunshot. That gunshot that  
2 grazed his face was the first gunshot, and it  
3 didn't come in that ditch.

4 What did David Watkins say? He said from the  
5 very beginning, Jonathan Farrell was begging for  
6 his life, Don't kill me. Ladies and gentlemen, if  
7 they're just out there kicking him, hitting him,  
8 tussling with him, what in his head is going to  
9 trigger the fact these people are going to kill me?

10 But if you're out there and you're cracked  
11 over your head with a two-by-four and someone  
12 shoots you in the face, these people are going to  
13 kill me. Please, don't kill me. Don't take my  
14 life. I submit to you that's what happened. He  
15 was shot in that road and somehow he ended up  
16 almost two hundred yards away with abrasions on his  
17 body and with dirt all over his back and his face.

18 Ladies and gentlemen, even if you believe  
19 David Watkins and that Latoya Davis fired that  
20 fatal shot, Jonathan Farrell had help getting in  
21 that ditch. Someone aided and someone abetted, and  
22 Jonathan Farrell is dead.

23 Ladies and gentlemen, it's your turn. I asked  
24 you yesterday, you have the opportunity to speak  
25 with words of justice. It's time to speak.

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1                   THE COURT: Ladies and gentlemen,  
2     it's now my duty to explain to you the law that  
3     will guide you in your deliberations. We  
4     appreciate how carefully you've listened. And I'm  
5     going slow, because, unfortunately, in the State of  
6     Alabama, you're not permitted to have a copy of my  
7     charge to take with you to the deliberation room.  
8     Now, I disagree with the law in that respect, but I  
9     must follow it, and so must you.

10           Now, this case is brought to you by an  
11     indictment which charges David Watkins with the  
12     intentional murder of John Farrell. I want you to  
13     understand from the beginning that the indictment  
14     here has no bearing whatsoever on the guilt or  
15     innocence of any person. It's not evidence in the  
16     case. It's merely the paperwork or legal process  
17     by which a case is presented for trial.

18           Now, as to this charge, the defendant has pled  
19     not guilty. A plea of not guilty places the burden  
20     on the State of Alabama to prove by the evidence  
21     presented the guilt of defendant beyond a  
22     reasonable doubt. So before a conviction can be  
23     had, each of you must be satisfied beyond a  
24     reasonable doubt of his guilt. Otherwise, he's  
25     entitled to an acquittal.

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1           Furthermore, the defendant is presumed to be  
2           innocent. And that presumption attends him until  
3           his guilt is established from the evidence beyond a  
4           reasonable doubt. Now, the presumption of  
5           innocence is evidence in the case and is to be  
6           considered by you along with all the other  
7           evidence. It's a fact which is to be considered by  
8           you and goes with the defendant to your verdict  
9           unless the evidence convinces you beyond a  
10          reasonable doubt of each and every element of the  
11          offense here.

12           Now, we've all mentioned reasonable doubt, and  
13          it is a relative term, and it's not easy to define.  
14          But, basically, a reasonable doubt is a fair doubt.  
15          It's based upon reason and common sense arising  
16          from the evidence. In short, it's a doubt for  
17          which you can assign a reason that comes from the  
18          evidence. Now, a reasonable doubt may arise not  
19          only from the evidence produced, but also from a  
20          lack of evidence or any part of the evidence.  
21          Again, the burden is on the State to prove all of  
22          the elements beyond a reasonable doubt.

23           Now, the law tells us this about the term  
24          reasonable doubt. It's not just a mere possible  
25          doubt. In other words, it's not a mere guess,

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1 surmise, or capricious doubt. The doubt which  
2 would justify an acquittal must be an actual doubt.  
3 The reasonable doubt which entitles an accused to  
4 an acquittal is not vague, fanciful, conjectural,  
5 or speculative, but it's a reasonable doubt arising  
6 from the evidence and remaining after careful  
7 consideration of the testimony such as men and  
8 women such as you would consider under all the  
9 circumstances.

10 Now, the State is not required to convince you  
11 of defendant's guilt beyond all doubt or to a  
12 mathematical certainty. Again, it's beyond a  
13 reasonable doubt.

14 I told you earlier that you're the sole judges  
15 of the evidence, and I'm going to remind you or  
16 explain to you, again, what is and what is not  
17 evidence.

18 First, as I just said, the indictment here, it  
19 is not evidence. In addition, the arguments,  
20 assertions, the statements of the attorneys, those  
21 are not evidence. Rulings made by the Court during  
22 the course of the trial, those are not evidence.  
23 Evidence is simply the testimony of witnesses under  
24 oath from that witness stand. It's any exhibits  
25 that have been admitted into evidence. And it's

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1 any presumptions of law that I've given you such as  
2 the presumption of innocence.

3 Just as you're the judges of the evidence,  
4 you're also the sole and exclusive judges of the  
5 credibility of witnesses and the weight that should  
6 be given their testimony. In passing on the  
7 credibility of a witness, you have the right to  
8 consider such factors as any bias, interest, or  
9 prejudice that may have been exhibited to you while  
10 that person was testifying. You also can consider  
11 the demeanor of the witness on the stand. That is,  
12 how did they appear to you while they were  
13 testifying? Also, you can consider the basis for  
14 their testimony. That is, how did they know the  
15 facts to which they testified? Did they have an  
16 opportunity to see, hear, learn, just how did they  
17 know those facts?

18 Now, the defendant here has testified in his  
19 own behalf, and he has a perfect right to do so.  
20 And you cannot capriciously disregard his testimony  
21 any more than that of any other witness. The law  
22 is that you must take his testimony in the case and  
23 consider it along with all the other evidence in  
24 the case. But while you are considering his  
25 testimony, you may also take into consideration his

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1 interest in the outcome of the case.

2 Now, with regard to the statement made by the  
3 defendant to the police, you should consider all of  
4 the facts and circumstances surrounding the taking  
5 of the statement in determining the weight or  
6 credibility, if any, that you will give to him.

7 In determining the credibility or weight, to which  
8 it is entitled, you should consider the  
9 circumstances under which it was obtained and the  
10 way or manner in which it was solicited, including  
11 the situation and relationship between the  
12 defendants and the others present or taking the  
13 statement. And those are the type factors you  
14 should consider in that regard.

15 Now, with a particular charge here, the  
16 defendant is charged with intentional murder.  
17 Under the law of Alabama, a person commits the  
18 crime of murder if he causes the death of another  
19 person and in performing the act or acts which  
20 caused the death of that person, he intends to kill  
21 that person. So in order to convict here, the  
22 State must prove beyond a reasonable doubt, first  
23 of all, that John Farrell is dead. And, second,  
24 that the defendant, David Watkins, caused the death  
25 of Mr. Farrell by shooting him or aiding and



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1 abetting -- and I'll explain that in just a moment.  
2 And in committing the act or acts which caused the  
3 death of the deceased, the defendant acted with  
4 intent.

5 Under the law, a person acts intentionally  
6 when it is his purpose to cause the death of  
7 another person. An intent may be inferred from the  
8 facts and circumstances surrounding the whole  
9 transaction or incident as well as the conduct of  
10 the defendant.

11 Now, you've heard the attorneys mention aid  
12 and abet. The law in Alabama is that a person is  
13 legally accountable for the behavior of another  
14 person constituting a crime if with intent to  
15 promote or assist the commission of that crime he  
16 aids or abets such other person in committing the  
17 crime. In other words, there's really no  
18 distinct -- distinction between principals and  
19 accessories in the commission of an offense.

20 Aid and abet comprehends all assistance  
21 rendered by acts or words of encouragement, support  
22 or presence, actual or constructive, to render  
23 assistance, should it become necessary. However,  
24 mere presence without giving aid or encouragement  
25 at or before the commission of the crime does not

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1 constitute aiding and abetting. But where there  
2 are two or more persons who enter into a common  
3 enterprise and a criminal offense is contemplated,  
4 then each could be said to be a co-conspirator.  
5 And if the unlawful act is carried out, each is  
6 guilty of the offense. And, again, any word or act  
7 contributing to the commission of the offense or  
8 intended to incite or encourage its accomplishment  
9 makes one a co-conspirator.

10 Now, it's a jury question for you to decide  
11 whether or not the defendant aided or abetted or  
12 was a co-conspirator in the commission of the  
13 offense here. And if you're convinced beyond a  
14 reasonable doubt that he was present with a view to  
15 render aid should it become necessary, then he  
16 could be found guilty of being an aider or abettor.

17 However, if you're not convinced beyond a  
18 reasonable doubt that he aided, abetted, and/or  
19 conspired to commit the offense, then you would not  
20 be able to determine that he aided and abetted in  
21 the offense.

22 In a moment you'll be beginning your  
23 deliberations. In passing on the evidence, you  
24 have the right to use your knowledge of people and  
25 their affairs. This is the tool that is given you

1 in which some of us simply call your common sense.  
2 Also in arriving at your verdict, you must not  
3 permit sympathy, prejudice or emotion to influence  
4 you.

5 Furthermore, you must not base your verdict  
6 upon any preconceived idea of what would be a  
7 popular or unpopular verdict. In other words, your  
8 verdict must strictly be based on the evidence  
9 presented and the law that applies.

10 Also, before you reach your verdict, all  
11 twelve of you must reach the same verdict. In  
12 other words, there can be no split verdict. It  
13 must be unanimous.

14 In a moment, you'll be going back to the jury  
15 deliberation room, and one of the first things you  
16 need to do is to select one person to act as your  
17 spokesperson or your foreperson. Now, that person  
18 will have no greater weight in your deliberations  
19 than anyone else, but will simply act as your  
20 foreperson. You need to discuss the case. And if  
21 you have any questions -- there's paper and pencil  
22 back there -- have the foreperson write out the  
23 question, sign it. And if it's a question of law,  
24 I will answer it. However, if it's a question of  
25 fact, I cannot assist you, as you are the sole and

1 exclusive judges of the facts.

2 Once you have reached a verdict, have the  
3 foreperson sign the verdict form, and you'll be  
4 brought back into the courtroom, and it will be  
5 read in the courtroom.

6 Now, the verdict form is really very simple.  
7 It's either we, the jury, find the defendant guilty  
8 of intentional murder as charged in the indictment.  
9 Or we, the jury, find the defendant not guilty.

10 There's one last thing I must do -- and I just  
11 want to stress the importance of this, because just  
12 last Monday we had a situation where after the  
13 first witness a juror had to be excused. And it  
14 was a one-day trial, and we did not get an  
15 alternate and it presented a bad situation.  
16 Particularly, in a criminal case, if for some  
17 reason someone cannot continue deliberating and the  
18 number reaches less than twelve, I would have to  
19 declare a mistrial, and we would have to start all  
20 over. So because of that -- and we weren't sure  
21 how long this case really would last, we got two  
22 alternates. And I'm going to ask the two  
23 alternates to stay in the courtroom when the rest  
24 of you go back in just a moment.

25 One thing, you are in charge of your time. If

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1 you want to take a break -- and you might want to  
2 go downstairs. If you want to get a Coke or  
3 something and bring back up here, you can do so.  
4 You also have your own thermostat back there, so  
5 you can have it as hot or cold as you want to. But  
6 the attorneys are real good about letting me know  
7 if I've overlooked something or misstated something  
8 or need to charge you further. And what says the  
9 State?

10 MR. KIDD: Satisfied Your Honor.

11 MR. DURANT: Satisfied.

12 THE COURT: Okay. It's going to  
13 take us a minute to get all the exhibits back  
14 there. And I may have Ms. Harrell take you back  
15 there, and then it might be a good time to take a  
16 break. We have a video back there. The stereo or  
17 the -- I call them record players -- I guess that  
18 shows how old I am -- it will go back there with  
19 you. And if you need any assistance, the law clerk  
20 can help you with it. But they'll go back there  
21 with you, and you can look at the video, listen to  
22 the audio, and, of course, the exhibits as well.  
23 Because it's going to take a few minutes, I'm going  
24 to let them have a break. There are restrooms back  
25 there. And there are two doors. And she'll show

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1 you which one you really need to knock on. It's  
2 not this one. If you have any questions -- but I'm  
3 going to get her to take y'all back there at this  
4 time.

5 And the two alternates are -- I'm sorry --  
6 Kim Dowe and John Harrison. And if the two of you  
7 would remain in here when you go back there? Thank  
8 you.

9 (Jury deliberating.)

10 (In the presence of the jury.)

11 THE COURT: I understand you've  
12 reached a verdict and you want the Court to read  
13 the verdict.

14 It is the verdict of the jury, we, the jury,  
15 find the defendant guilty of intentional murder as  
16 charged in the indictment.

17 Do you want the jurors polled?

18 MR. DURANT: Yes.

19 THE COURT: I'm going to ask each of  
20 you if this is your verdict. And I'll start down  
21 here. Is it your verdict?

22 JUROR: Yes.

23 JUROR: Yes.

24 JUROR: Yes.

25 JUROR: (Juror nods.)

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1 JUROR: (Juror nods.)

2 JUROR: (Juror nods.)

3 JUROR: Yes.

4 JUROR: (Juror nods.)

5 JUROR: (Juror nods.)

6 JUROR: (Juror nods.)

7 JUROR: (Juror nods.)

8 JUROR: (Juror nods.)

9 THE COURT: And let the Record

10 reflect that all jurors agreed it was their  
11 verdict. And in accordance with the jury verdict,  
12 the Court will adjudicate the defendant guilty.  
13 And I'll set sentencing in a moment.

14 I want to tell you how much we appreciate you  
15 serving. I know when most people come, they don't  
16 realize what difficult decisions you're going to  
17 have to make. But we couldn't operate without you,  
18 and I hope it's been a good experience over all.

19 The good news is you're excused for the rest  
20 of the week. The clerk's office isn't open. They  
21 will send you -- and it's small compensation -- but  
22 they can send you your juror fees. Or if you want  
23 to come down tomorrow, you can come down and get  
24 them. But you are excused. And I'm going to let  
25 her take you out the back way and all the

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1 spectators will need to stay until the jurors have  
2 left the courthouse.

3 (Out of presence of jury.)

4 THE COURT: And I'm going to set  
5 sentencing -- I probably can set sentencing  
6 quickly, because I think he's been incarcerated  
7 since the youthful offender report was done and  
8 nothing would have changed. So I'm going to try to  
9 set sentencing for May the 24th at 8:30. I don't  
10 think that will be a problem with whoever the  
11 probation officer was, but I think we can do that.  
12 And I'll recommit the defendant to the custody of  
13 the sheriff.

14 Do you want to take the victim's family on  
15 out?

16 (Court adjourned.)

17

18 \* \* \* \* \*

19

20 (Court in session on Monday,  
21 October 22, 2001.)

22 THE COURT: Robert Watkins,  
23 David Watkins, and Latoya Davis.

24 MR. POWELL: Your Honor, I believe  
25 we still need Mr. Durant.



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1 THE COURT: Where is Mr. Durant?

2 MR. JOHNSON: He is here. I saw him  
3 this morning.

4 THE COURT: Okay. If you -- which  
5 family member are you here for?

6 MR. HARTLEY: This is Latoya's  
7 father.

8 THE COURT: Okay. If he would sit  
9 down until I need to hear from him. I don't need  
10 anybody except the people up here.

11 Now, two of you were -- went to trial and were  
12 convicted. And Robert Watkins pled guilty. And  
13 you're all here for sentencing concerning the  
14 murder.

15 And I'll start with Robert Watkins. Is there  
16 anything you want to say before I pronounce  
17 sentence?

18 THE DEFENDANT: Yes, ma'am. I want  
19 to say --

20 THE COURT: Well, you need to speak  
21 up.

22 THE DEFENDANT: I want to say I'm  
23 sorry to the family for this happening. I'm sorry  
24 for the people of Jonathan Farrell.

25 MR. JOHNSON: Judge -- well, go

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1 ahead.

2 THE COURT: And do you have anyone  
3 here that you want to speak on his behalf or do you  
4 have anything you want to say, Mr. Johnson?

5 MR. JOHNSON: His mother, and then  
6 I'm going to say something.

7 Please state your name.

8 THE MOTHER: Brenda Faye Watkins.

9 MR. JOHNSON: Would you address the  
10 Court, please, for your son?

11 THE MOTHER: Yes. My son, Robert  
12 Lee Watkins. All I want to say was I'm sorry about  
13 what happened and also with them. And that he has  
14 been good, got a job, family, fixing to have a  
15 baby, and I was asking the Court to, you know, be  
16 innocent with him and take that into consideration.

17 THE COURT: Okay. Anyone else on  
18 his behalf?

19 MR. JOHNSON: I don't -- Your  
20 Honor --

21 THE COURT: And who is the mother of  
22 this child? I know that Latoya's sister is the  
23 mother of some of the children. Is this a new --  
24 this is another -- okay.

25 MR. JOHNSON: Judge, when we entered

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1 a plea, we did have a plea agreement in this case.  
2 The agreement would have been or is that the  
3 State --

4 THE COURT: Wait just a minute. I  
5 don't remember. And I just got Ms. Newman to type  
6 that up, and I don't remember any kind --

7 MR. JOHNSON: We didn't put it on  
8 the Record.

9 MR. KIDD: Well, Judge, I don't --  
10 my understanding was that there was no specific  
11 agreement that I agreed with --

12 MR. JOHNSON: Basically, Your  
13 Honor --

14 MR. KIDD: We would not be taking  
15 any position on what the Court decided to do in the  
16 event that Mr. Watkins cooperated fully.

17 MR. JOHNSON: If he cooperated  
18 fully, the State would not object to a minimum  
19 sentence of twenty years.

20 MR. KIDD: I did not say that.

21 THE COURT: Of course -- there's  
22 nothing on Record about a plea agreement. And I  
23 don't know what you mean by cooperate fully.  
24 Because I do recall him testifying at Latoya Davis'  
25 trial. And let's just say, his testimony was not

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1 what I would consider cooperating fully. Okay.

2 Anything else on behalf of Robert Watkins?

3 MR. JOHNSON: I would just say that  
4 he has -- as far as what he's done since this  
5 happened, he has worked full-time. He's been to my  
6 office. We've discussed this a number of times,  
7 and I think he's tried to do something to make  
8 himself better.

9 He's trying to take care of his family, and do  
10 things he should, to try to be a better person.

11 THE COURT: Now, Mr. Hartley, I'll  
12 go to you and your client, Ms. Davis.

13 MR. HARTLEY: Your Honor -- I'm  
14 sorry.

15 THE COURT: Okay. Anything she  
16 wants to say or you or anyone in her family?

17 MR. HARTLEY: Your Honor -- do you  
18 want to speak first and then --

19 THE DEFENDANT: Yes. I just want to  
20 say I'm sorry for what happened. And, you know, I  
21 wish the family the best.

22 MR. HARTLEY: Your Honor, most  
23 importantly, I would say that we are claiming that  
24 there is some surprise in this hearing in that  
25 Mr. -- counsel has suggested -- Mr. Johnson has

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1 suggested on his client's behalf that there is an  
2 agreement about his testimony. We inquired about  
3 that. We went into that at length during the  
4 trial. Prior to trial, I discussed it with the  
5 district attorney. If Mr. Robert Watkins testified  
6 against my client with the expectation that he  
7 would get minimum sentence, that didn't come out in  
8 trial, Judge.

9 THE COURT: I'm aware of what  
10 occurred at trial.

11 MR. HARTLEY: But, that is just a  
12 matter that we claim that surprised us this  
13 morning, Judge. But, more importantly, we would  
14 say that in hearing the trial from Latoya, it was  
15 very clear, as convoluted and as contradictory as  
16 the evidence was, that both Robert Davis and  
17 David Watkins -- Robert Watkins and David Watkins,  
18 both had a prior history with this man.  
19 Mr. Farrell was known to them from some prior  
20 incident that the Court heard about. And it  
21 involved them fighting and abusing and treating  
22 this man badly. There was no evidence in the case  
23 that Latoya had ever seen or heard of John Farrell  
24 before that night. And I think that it rings very  
25 hollow for them to say that they're so sorry about

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1 this, but they had -- it had to be drug out of them  
2 in Court that they had both been involved in an  
3 assault with Mr. Farrell two weeks before the date  
4 of his death. And I hope the Court remembered that  
5 she wasn't involved in that, Judge. She had no  
6 connection before.

7 THE COURT: Okay. Anything else on  
8 her behalf?

9 (No response.)

10 THE COURT: Okay. If you want to  
11 come up here and -- I know you're her father and  
12 have been here during other proceedings. And would  
13 you state your name for the Record?

14 THE FATHER: Eugene Davis.

15 THE COURT: And is there something  
16 you want to bring to the Court's attention?

17 THE FATHER: I'm sorry for the  
18 defendant and everything. But she has done a whole  
19 lot better since this occurred. And she started  
20 school trying to do a little bit better for  
21 herself.

22 THE COURT: Okay. If you'll have a  
23 seat.

24 Now, I'll go -- Mr. Durant, do you and your  
25 client, David Watkins, is there anything either of

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1 you want to say or anyone on behalf of him?

2 MR. DURANT: Judge, as the Court is  
3 aware, Mr. Watkins went to trial. Judge, I don't  
4 think that there's anything that came out in trial  
5 that would place a gun or make Mr. Watkins the  
6 shooter. I am not saying that in any way condoning  
7 what happened. This has been a tragic affair on  
8 all sides. These men were drinking and smoking  
9 that evening and, although, that doesn't undermine  
10 the charge that they are charged with, Judge, I  
11 will ask you to take that into consideration. And  
12 that is that he's a very young man. And I would  
13 ask that the Court impose the minimum sentence.  
14 There's been some -- came out in testimony that  
15 during the trial that there was some -- some  
16 horrific things done, but, Judge, I don't think  
17 that the prosecution was ever able to place my  
18 client as the person who was doing those things in  
19 terms of inflicting anything upon Mr. -- the  
20 victim. And I'll ask the Court to just consider  
21 those factors in sentencing Mr. Watkins.

22 THE COURT: Okay. Mr. Watkins, is  
23 there anything you want to say?

24 THE DEFENDANT: I just want to  
25 apologize to the victim's family. And I would like

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1 to say that I had no control over what happened. I  
2 really -- I didn't cause any of it that happened.  
3 There was no way I could stop what happened, and I  
4 just want to say I'm sorry.

5 THE COURT: Okay. Is there anything  
6 that --

7 MR. KIDD: Judge, if I may speak for  
8 Ms. Davis?

9 THE COURT: Okay.

10 MR. KIDD: First of all, Judge, I  
11 would like to put on the Record that there was no  
12 specific plea agreement with regard to  
13 Robert Watkins' case. And, in fact, if I'm not  
14 mistaken, when Mr. Watkins took the stand in  
15 Ms. Davis' case, I asked him specifically about  
16 that, and he replied in the negative that there was  
17 no specific plea agreement as to what would happen  
18 to him at sentencing.

19 Judge, Ms. Davis and her family have sat  
20 through two trials in this case. She sat through a  
21 plea in this case, and she has heard these three  
22 individuals recite and regurgitate the facts of  
23 that night in October. Through all of that, I  
24 don't think she yet has heard the truth about what  
25 happened to her son. Judge, you heard the facts in



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1 this case and about how horrible of a death that  
2 John Farrell went through. Your Honor, I think  
3 that in the least that Ms. Davis ought to be  
4 afforded with the opportunity to know what really  
5 happened that night. And, at this point, Your  
6 Honor, the only thing I can say from the State's  
7 perspective is that all three of these individuals  
8 cooperated fully in the death of John Farrell.  
9 Each one of them had multiple opportunities to  
10 prevent his death and took no action. And for  
11 those reasons, Your Honor, I feel the State's  
12 position is that each defendant is equally guilty  
13 as the other and should receive the same sentence,  
14 a maximum sentence of life.

15 THE COURT: Well, of course, the  
16 Court has been through two trials and a plea, and I  
17 will just say not all murders are equal. And this  
18 was a particularly, in my opinion, brutal  
19 situation. All of the defendants were pointing the  
20 finger at each other. All of them were involved.  
21 It was senseless. And this mother had to sit  
22 through two trials and hear about her son's last  
23 few minutes. And I have considered this case, and  
24 I am going to do the same sentence in each of them.  
25 And being sorry now, just doesn't bring back

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1 her son.

2 With regard to -- well, I think the easiest  
3 thing to do -- and there are no priors applicable  
4 for HOA purposes?

5 MR. KIDD: No, ma'am.

6 THE COURT: I'm sentencing each of  
7 these defendants to life imprisonment.

8 What about restitution?

9 MR. POWELL: Your Honor, there is  
10 five-thousand dollars in each case to the Crime  
11 Victim's Compensation Fund and two thousand six  
12 hundred dollars and thirty-nine cents to the family  
13 in each case.

14 THE COURT: You've broken it down?

15 MR. POWELL: I believe it's been  
16 broken down and --

17 MR. KIDD: Judge, we can give you a  
18 total --

19 MR. POWELL: -- prorated between  
20 each of the three defendants. And all of that is  
21 for funeral expenses and missed work and travel  
22 expenses for the family attending the trials and  
23 the court hearings.

24 THE COURT: Well, I'll order  
25 restitution in each case in those amounts. I'm not

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1 imposing fines, although, it would certainly be  
2 appropriate. But I hope at some time this family  
3 gets back some monies that they deserve for  
4 restitution. And because of that, I'm doing  
5 minimum on the others. There would be fifty  
6 dollars to Crime Victim, because some of the other  
7 costs would be, if they're recovered, go to Crime  
8 Victims. Of course, court costs. And  
9 Robert Watkins, his attorney is retained. And the  
10 other two, there will be a hundred fifty dollars  
11 toward court-appointed attorney's fees.

12 MR. JOHNSON: Your Honor, I was  
13 appointed in this case.

14 THE COURT: You were appointed?

15 MR. JOHNSON: Yes, ma'am.

16 THE COURT: I'm sorry. If you will  
17 get the Court a fee declaration, there will be --  
18 you're right. I'll order attorney's fees in those  
19 amounts. I would order one half of any monies  
20 earned paid toward your court-ordered monies.

21 You -- each of you do have a right to appeal.  
22 If you cannot afford a transcript or an attorney,  
23 that can be provided for you. In addition, you  
24 will be given credit for time actually served.

25 I would just say -- and I'm probably saying

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1 more than I should -- but, now, Robert Watkins is  
2 expecting to be a father of another child, knowing  
3 that he's facing this. Latoya Davis, after she's  
4 indicted, had to continue the trial, she got  
5 pregnant. And I am aware that there are children  
6 involved, but I think they should have been  
7 thinking about the situation, and I -- that's  
8 something I'm not going to consider in assessing  
9 this.

10 Again, I'm sorry that the mother had to sit  
11 through two trials and hear that her son was  
12 begging for his life during those moments. I think  
13 that takes care of it.

14 MR. HARTLEY: Judge, the -- Latoya  
15 will give notice of appeal.

16 THE COURT: I'll put down oral  
17 notice of appeal --

18 MR. JOHNSON: Also --

19 THE COURT: -- on all of them, and  
20 I'll set appeal bonds at a hundred fifty thousand  
21 dollars.

22 \* \* \* \* \*

23 END OF PROCEEDINGS

24 \* \* \* \* \*

25

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## 1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA

3 TALLAPOOSA COUNTY

4  
5 I, Meridith Newman, Court Reporter and  
6 Commissioner for the State of Alabama at Large,  
7 hereby certify that on Tuesday, May 15, and Monday,  
8 October 22, 2001, I reported the TESTIMONY AND  
9 PROCEEDINGS in the matter of the foregoing cause,  
10 and that the foregoing pages contain a true and  
11 accurate transcription of said proceedings.

12 I further certify that I am neither of kin nor  
13 of counsel to any of the parties to said cause, nor  
14 in any manner interested in the results thereof.

15 This 5th day of December, 2001.

16  
17 Meridith Newman

18 Meridith Newman, Court Reporter  
19 Commissioner for the State of  
Alabama at Large

20 MY COMMISSION EXPIRES: 12/30/2001  
21  
22  
23  
24  
25

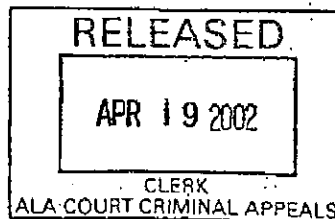
EXHIBIT-4

## Court of Criminal Appeals

State of Alabama  
Judicial Building, 300 Dexter Avenue  
P. O. Box 301555  
Montgomery, AL 36130-1555

April 19, 2002

H.W. "BUCKY" McMILLAN  
Presiding Judge  
SUE BELL COBB  
PAMELA W. BASCHAB  
GREG SHAW  
A. KELLI WISE  
Judges



Lane W. Mann  
Clerk  
Wanda K. Ivey  
Assistant Clerk  
(334) 242-4590  
Fax (334) 242-4689

### MEMORANDUM

CR-01-0232

Montgomery Circuit Court CC-2000-1506

David Leonard Watkins, alias David L. Watkins and David Watkins v. State

PATTERSON, Retired Appellate Judge.

Watkins appeals from his conviction for murder and sentence, as a habitual offender, of life imprisonment. He was also ordered to pay \$7,600.39 in restitution; \$50 to the Crime Victims Assessment fund; \$150 in attorney fees; and court costs.

I.

Watkins contends that the trial court erred in failing to instruct the jury on intoxication and on the offense of manslaughter, as a lesser offense of the offense of intentional murder. He argues that the evidence of his intoxication at the time of the killing supported these instructions. Watkins's appellate counsel concedes that this issue was not preserved for our review. Because this is not

a death-penalty case, we cannot review it for plain error, as he requests. See Myers v. State, 677 So. 2d 807 (Ala. Crim. App. 1995).

## II.

Watkins contends that the trial court erred in allowing the prosecution, in closing argument, to allegedly quote to the jury a portion of a transcript of Watkins's videotaped confession. Prior to trial, the trial court denied the prosecution's request to provide that transcript to the jury.<sup>1</sup> Watkins asserts that, "in the closing statement, the prosecution repeatedly read from the transcript -- forcing upon the jury the prosecution's opinion of the contents of the tape." (Appellant's brief, p. 12.) He also argues that the trial court erred in not giving the jury curative instructions.

The pertinent portion of the prosecutor's closing argument shows the following:

"[W]hen you go back in that jury room, as finders of fact, part of your job is to determine what was said on that [videotaped] statement. ... But what I'm going to show you now comes from what we've listened to on the statement and this is what we believe the defendant to be saying from our view of the statement. Again, as finders of fact, ... you can agree with us or you can disagree with us or you can ... determine what was actually said on this tape. But let's start with the defendant's statement.

"Question: Okay... Answer: Once he got there, I urinated on him. I took a leak on him for no reason

---

<sup>1</sup>In so ruling, the trial court noted the following: "I think that almost all of the transcript is correct. However, it does concern me that there are a few incidents where [the videotape] appeared to me to be inaudible ...." The court continued, "[T]here's only a few incidents and a few words that are really, in my opinion, not audible, although it -- certainly at times the defendant is not speaking as loudly ... [as] or clearly as other portions."

whatsoever. Question: All right. Was this before or after you kicked him?

"It was before I kicked him. Question: Was this before or after Robert picked him up and threw him down on the ground? Answer: It was after. I don't know if he dropped him on the head. ... When I came outside, his head was bleeding, and that's when I took a leak on him.

"This is where the defendant confesses to urinating and kicking the victim during the altercation. I think we all heard that from the statement so we won't dwell on that.

"THE COURT: Come up here just a minute.

"(Bench conference was held.)

"MR. POWELL [the prosecutor]: Again, if you continue to go through the defendant's statement, Question: How did he get to the end of the street? Answer: He pretty much got up on his own. Question: And he walked --

"THE COURT: Come up here, Mr. Powell.

"(Bench conference was held.)

"MR. POWELL: There was another portion of the statement where Sergeant Loria asked him, Well, if you and Latoya urinated on him, how did you pick him up and carry him to the end of the street? In the statement, the defendant says, basically he got up and he staggered around and he walked down to the end of the street where the church was. Play back the portion of the tape, listen to it for yourself. In that portion of the tape, he says, that after they got done hitting him and kicking him, they walked down to the end of the street.

"There's another portion of the statement where Sergeant Loria asked the defendant who hit him over the end [sic] with the board. The defendant responds, Toya did. There's a portion of the statement where Sergeant Loria goes, Well, you saw this? And the defendant's response is I saw this. And then the defendant talks



about how he tried to stop her. He even said the same thing on the witness stand. He said he went over to her and grabbed her around the waist. In his statement, he also says that when he grabbed her, she dropped the board. And he also says in his statement that she was persistent. She kept on. So since she was persistent he says in his statement, if you'll listen for it, I told her to do it. Just do it. And then she went on and did it, because she was going to do it any way. If you'll listen, that's in the statement.

"Basically, the defendant is telling Toya, if you're going to hit him, go ahead and hit him.

"MR. DURANT [defense counsel]: Judge, may we approach?

"THE COURT: Yes.

"(Bench conference being held.)

"MR. DURANT: Judge, I know that you have admonished Mr. Powell not to use the actual statement in addressing the jury. But in ... fact he's still doing the same thing --

"THE COURT: He can argue, but he cannot -- (inaudible).

"MR. DURANT: Well, he is constantly referring to that, Judge.

"THE COURT: Just refer to your notes.

"(In the hearing of the jury.)

"MR. POWELL: If you continue listening to the statement, you'll come to a point where Sergeant Loria asked him, Why didn't you help him? He was begging Robert for his life, why didn't you help him? And if you'll listen to the defendant's response, he responds, He never begged me. If you continue on through his statement --

"MR. DURANT: Judge, we object again. May we approach?

"MR. POWELL: I'm -- I'm not reading.

" (Bench conference was held.)

"MR. POWELL: Then we get to the most critical portion of the statement. There comes a point where Detective Kennedy asked him -- and Junior said -- and before she can finish her question, the defendant starts talking. And I'm going to play that portion of the videotape statement for you again.

" (Taped statement played again.)

"MR. DURANT: Judge, we're going to object to this also.

"THE COURT: Overruled."

The only adverse ruling, in the excerpt above, was in response to Watkins's general objection to the prosecutor's playing a portion of the videotape. Up to that point, no adverse ruling was entered by the court. See Lee v. State, 562 So. 2d 657, 665 (Ala. Crim. App. 1989) (the record presented no adverse ruling where, even though the trial court warned the prosecutor to refrain from referring to the appellant as a vicious person, it did not expressly rule on counsel's objection, and the appellant's attorney made no request for a curative instruction to be given, or motion to strike or exclude the comment). Watkins's general objection preserved nothing for this court's review. See Marty v. State, 656 So. 2d 416 (Ala. Crim. App. 1994).

"Generally, improper argument of counsel is not ... subject to review on appeal unless there is a timely and specific objection by counsel or a motion to exclude, and adverse ruling thereon by the trial court, or a refusal of the trial court to make a ruling, and an objection thereto."

Steely v. State, 622 So. 2d 421, 423 (Ala. Crim. App. 1992) (quoting Trawick v. State, 431 So. 2d 574, 578 (Ala. Crim.

App. 1983)). We cannot review Watkins's claim.

Accordingly, the trial court's judgment is affirmed.

The foregoing memorandum opinion was prepared by Retired Appellate Judge John Patterson while serving on active duty status as a judge of this court under the provisions of § 12-18-10(e), Ala. Code 1975.

AFFIRMED.

McMillan, P.J., and Cobb, Baschab, and Wise, JJ. concur.  
Shaw, J., concurs in the result.

EXHIBIT-5

IN THE COURT OF CRIMINAL APPEALS  
STATE OF ALABAMA

Case No. 01-0232

DAVID LEONARD WATKINS,

Appellant,

v.

STATE OF ALABAMA,

Appellee.

APPEAL FROM THE CIRCUIT COURT  
OF MONTGOMERY COUNTY, ALABAMA  
CASE NUMBER: CC00-1506,

BRIEF OF APPELLANT DAVID LEONARD WATKINS

KELLY VICKERS  
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(334) 202-7750

ATTORNEY FOR APPELLANT

ORAL ARGUMENT REQUESTED

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ORAL ARGUMENT REQUESTED

Because of the multiple issues, counsel for the Appellant would be glad to argue the points herein in person, if so desired by the court, to provide further clarity on the pleading.

TABLE OF OTHER AUTHORITIES

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<i>Ex parte Womack</i> , <u>435 So.2d 766</u> , 769 (Ala.)-----	11
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<i>Bradley v. State</i> , 577 So.2d 1386 (Ala.Crim.App. 1991)-----	12

## STATEMENT OF THE CASE

This appeal is from a finding of guilt on the charge of intentional murder, following a jury trial. On the 15<sup>th</sup> of September, 2000 the Appellant was indicted for one felony count: the intentional murder of Christopher Ferrell. (C 15)

On 9/28/00 he was arraigned in open court. (C 1) On 3/8/01 he was denied youthful offender status. (C 1) On 3/22/01 he requested a speedy trial. (C 1) Beginning on 5/15/01 he had a jury trial. (C 1)

Six witnesses testified at trial: Geno Howton (R 50) who was the chief detective on the case, A. Loria (R 73) who took the statement from David Watkins, William R. Huett (R 112) who was the evidence technician who documented the scene and collected evidence, James Sparrow (R 114) who took the body of the victim to the morgue, James Lauridson (R 147) who performed the autopsy, and David Watkins (R 185) took the stand in his own defense. The focal point of the trial and evidence was the statement ("confession") by David Watkins. On 5/16/01 the jury returned a verdict of guilty of intentional murder. C 1,33)

On October 22, 2001 the Appellant appeared for sentencing along with the other two co-defendants. The Court sentenced the Appellant to LIFE in the custody of the Department of Corrections. (C 3) At the time of sentencing David Watkins entered oral notice of appeal. (C 3) This appeal ensued.

Rulings adverse to Appellant:

Court appoints Winston Durant to represent Appellant at trial.  
(C 1)

Court denies youthful offender status. (C2)

Sentence of life in prison (C3)

Court denies defense counsel's verbal motion to suppress video of  
alleged confession. (R 35)

Court fails to include manslaughter as an option on the verdict  
form. (C33)

Court allows (over objection) prosecution to repeatedly quote  
from the previously disallowed transcript of the taped statement.  
(R 237-242)



## STATEMENT OF THE FACTS

On or about October 19, 1999, the Appellant, David Watkins, was playing cards and listening to music with Robert Watkins, Latoya Davis, and Christopher Ferrell. They were in the home of Robert Watkins on Keystone Street in Montgomery, Alabama. (R 38-41, 186-193)) They were all drinking. (R 40, 191) A fight broke out. The taped confession indicates that Robert Watkins, Latoya Davis, and David Watkins all participated in beating Christopher Ferrell. The taped statement indicates the Appellant urinated in the victim's face. (R 41) The victim was found dead in a ditch with two gunshot wounds to the head. (R 50>, R 147>) On the stand the Appellant stated he was intoxicated and intimidated when he gave the taped "confession" and that in fact he did not do anything to harm the victim or further the crime. (R 185>)

Law enforcement had no gun, fingerprints, etc. to connect any of the defendants to the crime. The forensic evidence in and of itself did not indicate any particular perpetrator. (R 50>, R 147>) Each of the defendants blamed the others. (R 286) The chief evidence which convicted the Appellant was his taped statement.

This was originally charged as a capital murder case. (C 12) The grand jury returned an indictment on intentional murder, based on complicity. (C 15) The appointed trial counsel for the Appellant never filed any written motion whatsoever and rarely objected or otherwise attempted to preserve issues of potential error. The appeal is therefore limited on preserved issues.

STATEMENT OF THE ISSUES

1. Did the Trial Court err in failing to instruct the jury regarding intoxication and failing to include the lesser included offense of manslaughter where it was undisputed that the Appellant was drinking and intoxicated at the time of the murder?
2. Did the Court err in allowing the prosecution to quote from the transcript (which the Court had earlier refused to be shown to the jury) in the closing statement?

SUMMARY OF THE ARGUMENTS

1. The Trial Court erred in failing to instruct the jury regarding intoxication and failing to include the lesser included offense of manslaughter where it was undisputed that the Appellant was drinking and intoxicated at the time of the murder.
2. The Court erred in allowing the prosecution to quote from the transcript (which the Court had earlier refused to be shown to the jury) in the closing statement.

### ARGUMENT

The Appellant's rights were violated and errors made on several issues and occasions. Most of the problems were not preserved by trial counsel, who never filed any written motion and rarely objected to preserve potential error. Counsel on appeal recognizes the holding of *Ex Parte Ingram*, 675 So.2d 863 (Ala. 1996) regarding the appropriate forum for raising issues of ineffective assistance of counsel. Nevertheless, the Appellant raises two issues which would indicate a reversal is appropriate in this cause.

### ISSUES 1.

The Trial Court erred by failing to instruct the jury regarding intoxication and failing to include the lesser included offense of manslaughter where it was undisputed that the Appellant was drinking and intoxicated at the time of the murder. It was undisputed that all the defendants and the victim were drinking heavily and likely intoxicated at the time of the alleged murder. (See R 40, 49, 187, 191, 284, etc.) In fact the autopsy revealed the victim's blood alcohol level was at .29, more than three and half times the level the legislature has found indicates someone is too impaired to drive. (R 181) Code of Alabama 1975 § 32-5A-191(a)(1).

The verdict form provided to the jury only included the indicted charge of intentional murder, and the Court never

mentioned anything to the jury regarding the law on intoxication when the instructions were given to the jury (C 33, R 265-274) Ashley v. State, 651 So.2d 1096 at 1098 (Ala.Cr.App. 1994) states:

Likewise, the Court committed reversible error in failing to instruct the jury on manslaughter." "When the crime charged involves specific intent, such as murder, and there is evidence of intoxication, the trial judge should instruct the jury on the lesser included offense of manslaughter." Gray v. State, 482 So.2d 1318, 1319 (Ala.Cr.App. 1985)." McNeill, 496 So.2d at 109.

(See also Moore v. State, 647 So.2d 43 (Ala.Cr.App. 1994)).

Further, the Court's failure to instruct on the law regarding intoxication is plain error and requires a reversal under these circumstances. See Hutcherson v. State, 677 So.2d 1174 (Ala.Cr.App. 1994):

Because we have determined that the failure to instruct the jury on intoxication was plain error, we need not address the question of whether the failure to give the manslaughter instruction was also plain error. We do observe, however, that degrees of homicide included in the indictment, when a party is on trial for murder, unless it is perfectly clear to the judicial mind that there is no evidence tending to bring the offense within some particular degree.' Phelps v. State, 435 So.2d 158, 163 (Ala.Cr.App. 1983), quoted in Jones v. State, 514 So.2d 1060, 1064 (Ala.Cr.App.), cert. denied, 514 So.2d 1068 (Ala. 1987).

Despite the fact that the appointed trial counsel failed to preserve these issues, these matters are still properly before the Appellate Court under the "plain error" doctrine. See Hutcherson, *ibid*:

The Alabama Supreme Court has adopted federal "[p]lain error" only arises if the error is so obvious that the failure to notice it would seriously affect the fairness or integrity of the judicial proceedings,' *Ex parte Womack*, 435 So.2d 766, 769 (Ala.), cert. denied, 464 U.S. 986, 104 S.Ct. 436, 78 L.Ed.2d 367 (1983) (quoting *United States v. Chaney*, 662 F.2d 1148, 1152 (5th Cir. 1981))."

"[T]he plain-error exception to the contemporaneous-objection rule is to be 'used sparingly, solely in those circumstances in which a miscarriage of justice would otherwise result.' " *United States v. Young*, 470 U.S. 1, 15, 105 S.Ct. 1038, 1046, 84 L.Ed.2d 1, 14 (1985), quoting *United States v. Frady*, 456 U.S. 152, 163, 102 S.Ct. 1584, 1592, 71 L.Ed.2d 816 (1982). To find plain error "the claimed error [must] not only [have] seriously affected [the defendant's] 'substantial rights,' but. . . it [must have] had an unfair prejudicial impact on the jury's deliberations." *Young*, 470 U.S. at 18, 105 S.Ct. at 1047, n. 14, 84 L.Ed.2d at 14.

Intoxication, both at the time of the murder and later at the time the taped statement was given, was such an integral part of this case that the failure of the Court to instruct the jury on intoxication and the Court's failure to include appropriate lesser included offenses is plain error.

Accordingly, on these issues, the underlying case on appeal herein is due to be reversed.

#### ISSUE 2

The Court erred in allowing the prosecution to quote from the transcript (which the Court had earlier refused to be shown to the jury) in the closing statement. As noted above the only connecting evidence the prosecution had was a statement given to law enforcement by the Appellant. Prior to the beginning of the

trial, counsel and the Court engaged in a discussion regarding the taped statement; the Assistant District Attorney wanted to publish to the jury a written transcript of the statement. Counsel for the Appellant objected. The Court reviewed the tape and compared the prepared transcript and ruled that the transcript could not be provided to the jury. (R 31-36) This was a good ruling in that it preserved the juries' role as the fact finder. However in the closing statement the prosecution repeatedly read from the transcript—forcing upon the jury the prosecution's opinion of the contents of the tape. The Defense counsel objected to such several times, but it continued. The Prosecution was pulled to the bench by the judge two times and (though the bench conferences are not recorded) it appears he was admonished to stop. (R 237-239)

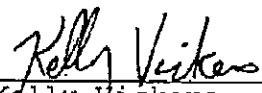
The prosecution may not offer opinion in closing arguments as to matters of fact. *Jones v. State*, 603 So.2d 419 (Ala.Crim.App., 1992) The Court never gave the jury a curative instruction on these improper and prejudicial statements. The Court's failure necessitates a reversal. See *Quinlivan v. State*, 579 So.2d 1386 (Ala.Crim.App. 1991) and *Bradley v. State*, 577 So.2d 1386 (Ala.Crim.App. 1991)

A fair and appropriate remedy for this and other violations of the Appellant's rights herein would be a reversal of the convictions.

CONCLUSION

For the foregoing reasons the Appellant prays that this Court will reverse the convictions on all the underlying cases with instructions to the trial court which will address injustices and protect his rights.

Respectfully submitted,

  
\_\_\_\_\_  
Kelly Vickers  
Attorney for the Appellant

OF COUNSEL:  
Kelly Vickers  
Attorney at Law  
P. O. Box 230803  
Montgomery, Alabama 36123  
(334) 202-7750



CERTIFICATE OF SERVICE

I hereby certify that on this 6<sup>th</sup> day of February, 2002, I did serve a copy of the foregoing on the following, by placing the same in the United States Mail, first class, postage prepaid and addressed as follows:

The Honorable Bill Pryor  
Office of the Attorney General  
Criminal Appeals Division  
Alabama State House  
11 South Union Street  
Montgomery, Alabama 36130  
(334) 242-7300

David L. Watkins  
Kilby Correctional Facility  
P.O. Box 150  
Mt. Meigs, AL 36054

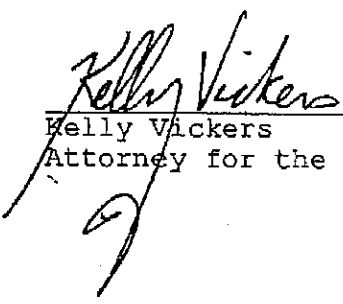
  
\_\_\_\_\_  
Kelly Vickers  
Attorney for the Appellant

EXHIBIT-6

No. CR-01-0232

IN THE COURT OF CRIMINAL APPEALS OF ALABAMA

DAVID LEONARD WATKINS,

Appellant,

v.

STATE OF ALABAMA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA

BRIEF AND ARGUMENT

OF

BILL PRYOR  
ATTORNEY GENERAL

AND

MICHAEL B. BILLINGSLEY  
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR APPELLEE

Office Of The Attorney General  
Criminal Appeals Division  
Alabama State House  
11 South Union Street  
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**STATEMENT OF THE CASE AND FACTS<sup>1</sup>**

This is an appeal from an order entered by Montgomery County Circuit Court Judge Sally M. Greenhaw, adjudging David Watkins guilty of the crime of intentional murder in violation of Section 13A-6-2 of the *Code of Alabama* (1975). (R. 276) As a result of the conviction, Watkins was sentenced to serve life in the state penitentiary. (R. 287)

On September 15, 2000, Watkins was indicted for the offense of murder as follows:

The Grand Jury of said County charge that, before the finding of this indictment, DAVID LEONARD WATKINS, alias DAVID L. WATKINS, alias DAVID WATKINS, whose name is otherwise unknown to the Grand Jury, and/or an accomplice did intentionally cause the death of another person, John Ferrell, by shooting with a gun, in violation of Section 13A-6-2 of the Code of Alabama, against the peace and dignity of the State of Alabama.

(C. 15-16) The indictment resulted from an incident in which John Ferrell was beaten and shot in the head following a dispute arising during a game of cards. David Watkins gave a taped statement to police, admitting his involvement in the murder of the victim. (R. 85) Two other individuals, Robert Watkins and Latoya Davis, were also involved. (R. 277) All three were convicted of murder and each received a life sentence. (R. 287)

---

<sup>1</sup> Due to the claims asserted by Watkins, a detailed recital of the facts would not be particularly "relevant to the issue[] presented for review." Rule 28(a)(4), *Ala. R. App. P.* This brief, therefore, does not include a separate "Statement of the Facts."

On September 28, 2000, Watkins was arraigned and entered a plea of not guilty to the charge. (C. 1) His trial began on May 14, 2001. (R. 1) Following the striking of the jury, opening statements, the presentation of evidence, closing arguments, and instructions from the trial judge, the jury found Watkins guilty as charged in the indictment. (C. 33) The record reveals that Watkins submitted no requested jury instructions and that, at the conclusion of the instructions, he affirmatively stated that he was "satisfied" with the charge. (R. 274)

On October 22, 2001, the trial court held a sentencing hearing. (R. 277) As noted, Watkins was sentenced to serve life imprisonment. (R. 287) He was additionally ordered to pay \$7,600.39 in restitution, \$50.00 to the Crime Victim Assessment Fund, and \$150.00 in attorneys fees. (C. 3) Oral notice of appeal was given the date of sentencing. (C. 3)

ISSUES PRESENTED FOR REVIEW

I.

IS A CLAIM THAT WATKINS WAS ENTITLED  
TO AN INSTRUCTION ON THE LESSER  
INCLUDED OFFENSE OF MANSLAUGHTER  
PRESERVED FOR REVIEW?

II.

DO THE PROSECUTOR'S COMMENTS, MADE  
DURING CLOSING ARGUMENT, REGARDING  
THE STATEMENT GIVEN BY WATKINS,  
WARRANT A REVERSAL OF HIS  
CONVICTION?

---

ARGUMENTI.

**WATKINS'S CLAIM THAT HE WAS ENTITLED  
TO AN INSTRUCTION ON THE LESSER  
INCLUDED OFFENSE OF MANSLAUGHTER IS  
NOT PRESERVED FOR REVIEW.**

Watkins contends that "the trial court erred by failing to instruct the jury regarding intoxication and failing to include the lesser included offense of manslaughter where it was undisputed that [he] was drinking and intoxicated at the time of the murder." (Watkins's brief at p. 9) Watkins did not, however, request such an instruction at trial. In fact, at the conclusion of the trial court's instructions, Watkins affirmatively announced that he was "satisfied" with the charge. (R. 274) "This issue, [therefore,] having been raised first on appeal, was not preserved for [this Court's] review. Review by this court is limited to matters properly raised before the trial courts." *Brown v. State*, No. CR-99-1713, 2000 WL 1763377, at \*6 (Ala. Crim. App. Dec. 1, 2000), citing *Carter v. State*, 627 So. 2d 1027, 1028 (Ala. Crim. App. 1992).

Recognizing his failure to preserve this issue, Watkins quotes from this Court's opinion in *Hutcherson v. State*, 677 So. 2d 1174 (1994), and asserts that "these matters are still properly before [this Court] under the 'plain error' doctrine." (Watkins's brief at p. 10) "[T]his court has, however, refused to apply the 'plain error' doctrine to any case that does not involve the death penalty." *Myers v. State*, 677 So. 2d 807, 810 (Ala.



Crim. App. 1995), citing *Thomas v. State*, 622 So. 2d 415 (Ala. Crim. App. 1992); *cert. quashed*, 622 So. 2d 420 (Ala. 1993); see also Rule 45A, Ala. R. App. P. ("In all cases in which the death penalty has been imposed, the court of criminal appeals shall notice any plain error or defect in the proceedings under review, whether or not brought to the attention of the trial court . . ."). Because Watkins is not under a sentence of death -- indeed, he was never even charged with capital murder -- the plain error doctrine does not apply here. His request that this Court review his claim in such a manner should, therefore, be rejected.

## II.

**THE PROSECUTOR'S COMMENTS, MADE  
DURING CLOSING ARGUMENT, REGARDING  
THE STATEMENT GIVEN BY WATKINS, DO  
NOT WARRANT REVERSAL.**

Watkins asserts that "the [trial] court erred in allowing the prosecution to quote from the transcript (which the Court had earlier refused to be shown to the jury) in closing statement." (Watkins's brief at p. 11) For the following reasons, this claim is without merit and due to be denied.

The record reveals that, before the presentation of evidence, the prosecutor informed the court of his intent to introduce a transcript of Watkins's videotaped statement to police, along with the videotape itself. (R. 31) After reviewing both, the court stated that it would admit the videotape, but would not allow the jury to have a copy of the transcript. (R. 36) The prosecutor, although he did not inform the jury regarding what he was referencing, apparently quoted from the transcript during closing argument. (R. 237) It is this action, on the part of the State, that Watkins brings into question on appeal.

Initially, the basis for Watkins's complaint is not accurate. He asserts that "the trial court erred in *allowing* the prosecution to quote from the transcript." (Watkins's brief at p. 11) (emphasis added) The record demonstrates, however, that it was the trial judge who -- without any prompting from Watkins -- called the prosecutor to the bench and told him "not to use the actual statement in addressing the jury." (R.

239) Plainly, the trial judge did not *allow* the prosecution to quote from the transcript, as is asserted by Watkins. Rather, the trial judge, *sua sponte*, affirmatively instructed the prosecutor not to do so. Watkins's claim is, therefore, ~~due-to-be~~ denied.

Watkins does additionally complain that "the Court never gave the jury a curative instruction on these improper and prejudicial statements." (Watkins's brief at p. 12) While not conceding that the statements were either improper or prejudicial, there is nothing in the record to indicate that Watkins ever requested a curative instruction. Whether such an instruction should have been given is, therefore, an issue not preserved for review. *See Brown v. State*, No. CR-99-1713, 2000 WL 1763377, at \*6 (Ala. Crim. App. Dec. 1, 2000).

Finally, even assuming *arguendo* that error occurred, it was plainly harmless. The videotape of the statement itself was admitted into evidence and, therefore, was available to the jurors during deliberations. Moreover, the jury was informed that the statements of the attorneys are not evidence and that they were "the sole judges of the evidence." (R. 267) Jurors are presumed to follow their instructions. *See Taylor v. State*, 666 So. 2d 36, 70 (Ala. Crim. App. 1994), *aff'd*, 666 So. 2d 73 (Ala. 1995), *cert. denied*, 116 S. Ct. 928 (1996). Perhaps most significant, Watkins has failed to point to any portion of the prosecutor's closing argument that, in any way, misrepresented the content of his statement to the police.

For all of the foregoing reasons, Watkins's claim -- that the trial court erred in allowing the prosecution to quote from the transcript of his statement -- is without merit and due to be denied.

**CONCLUSION**

For the above reasons, Watkins is not entitled to any relief. His conviction and sentence should be affirmed.

Respectfully submitted,


BILL PRYOR  
ATTORNEY GENERAL

  
MICHAEL B. BILLINGSLEY  
ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February, 2002, I served a copy of the foregoing on the attorney for the Appellant, by placing said copies in the United States Mail, first class, postage prepaid, and addressed as follows:

Kelly Vickers, Esquire  
P.O. Box 230803  
Montgomery, AL 36123

  
MICHAEL B. BILLINGSLEY  
ASSISTANT ATTORNEY GENERAL

ADDRESS OF COUNSEL:

Office of the Attorney General  
Criminal Appeals Division  
Alabama State House  
11 South Union Street  
Montgomery, Alabama 36130  
(334) 242-7386

EXHIBIT-7

THE STATE OF ALABAMA  
MONTGOMERY COUNTY

Circuit Court of Montgomery County, SEPTEMBER Term, A.D. 2000

The Grand Jury of said County charge that, before the finding of this indictment,

DAVID LEONARD WATKINS, alias  
DAVID L. WATKINS, alias  
DAVID WATKINS,

whose name is otherwise unknown to the Grand Jury, and/or accomplice did  
intentionally cause the death of another person, John Ferrell, by shooting  
with a gun, in violation of Section 13A-6-2 of the Code of Alabama,

against the peace and dignity of the State of Alabama.

  
District Attorney, Fifteenth Judicial Circuit of Alabama

2000-1506 SM 5

CI NO. 334

THE STATE OF ALABAMA

David L. Watkins

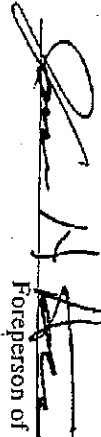
HT: 5'7 WT: 150 DOB: 09/18/79

SID. NO. ARREST DATE 10/22/99

FOR

MURDER

A TRUE BILL

  
Foreperson of Grand Jury

No Prosecutor

BAIL IN THIS CASE IS FIXED AT

\$ 100,000

Judge of Circuit Court of Montgomery County

CC NO. Redmond

71

Presented in open Court by the Foreperson of

the Montgomery County Grand Jury in the pres-

ence of 16 other members of

the Grand Jury and filed this 15 day of

Sept. 2000



Clerk of the Circuit Court of Montgomery County

WITNESSES

See Attached witnesses

09/11/00 13.11.22

FIRST NAME	LAST NAME	ADDRESS	CITY	STATE	EMPLOYER	EMPLOYER ADDRESS
K.B. Scott	Barnett	3650 Kruse St		1MPD		
Amie	Bozeman			2DFS		
C.H. Marcus	Clark	62607 Lark Drive		4MCSO		
Rickey	Cole	7#5 Rouse St		5MPD		
L. Eugene	Scrumble	9804 W. Edgemont		7Bama Foundry		71491 N. Court St
Ruby	Davis	10650 Kruse St		4MPD		41527 East Ann St
R.H. Peter	Green			9White Roofing		
J.D. Kenfigk	Hacchia			1MPD		
Levius	Happy	142627 Lark Drive		1DFS		
Sammy	Houston	152661 W. Edgemont		13MPD		
E. E.	Howard	103406 Clearview St		14 Student-ASU		
W.R. Bridgett	Howton			17MPD		
Elvira Cretta	Shuett	19243 Carlisle St		18MPD		
Felicia	Jackson	20532 Oak Street				
Tameeka	Zuones	21675 Kimball Street				
G.A. Kennedy	Jones	223106 Clearview St				
H.E. James	Kennedy			23MPD		
A. Rorzell	Leuridson			24MPD		
A. Tavaris	Lohman			24DFS		
J.N. Mackey	Loria	262627 Lark Drive		26AB1		
Scott	Madson			27MPD		
A. A.	McKay			29MPD		
G.A. Rose	Mercado			30MPD		
C. C.	Moscos			30MCSO		
Sarawane	Macinovich			30MPD		
Joe	Naquin			30MPD		
Isabonog	Parrish			30MPD		
Ronnie	Saldom	38632 Underwood Street		30MPD		
S.S. Smith	Sanford	201624-B Oak Street		30DFS		
Christina	Scott			37Ranada Inn		37Eastern Blvd
J. Antvania Rene	Somerlott	41707 Community St		42MPD		
Joseph Phonshe	Sparrow	43675 Kimball Street				
Dezkendray	Whitsenanc	44659 Keystone Street				
Jamykel	Whitsenanc	451263 Bell Street				
Kelshe	Williams	46632 Underwood Street				
Tyrone	Williams	473406 Clearview St				
Michael	Williams	474146 HomeView				
	Woods, II	481342 Bancroft Ave				

\*\*\*\*\* END OF REPORT \*\*\*\*\*



EXHIBIT-8

State of Alabama Unified Judicial System Form C-7 Rev 2/79	CASE ACTION SUMMARY CONTINUATION		Case Number cc-00-1506
Style:	STATE OF ALABAMA V. <u>David Watkins</u>		Page Number _____ of _____ Pages
DATE	ACTIONS, JUDGMENTS, CASE NOTES		
10/22/01	Defendant & attorney appeared for sentencing. Court asked if he/she had anything to say why sentence should not now be pronounced and Defendant having his/her say, it is ORDERED:		
10-23-01	HOA Enhancements Applicable <u>Yes/No</u> Defendant Admits _____ State Proves _____ Priors _____		
	Sentenced to <u>Life</u> yrs./split to serve _____ yrs. _____ reverse split postpone _____ review _____ Concurrent _____ Consecutive _____		
Comp	SUSPENDED YES/NO SUPERVISED/COURT PROBATION _____ years LEVEL II _____ Monitor _____		
	ENHANCEMENTS - Weapons _____ years Drug - _____ years School/Public Housing _____ years Sale under 18 \$1000/2000 Fine _____ Remit portion completion SAP _____ Driver License suspended 6 mo. _____ \$100.00 DFS fee		
	GED _____ BootCamp _____ /SAP _____ /Chain Gang _____ Work Release _____ Frank Lee _____ /Employment _____ Community Service _____ hrs.at _____ /PO Select Review upon completion - Yes _____		
	Other - _____		
	Restitution \$ <u>7600.39</u> Fine \$ _____ Crime Victim \$25.00/\$50.00/\$ _____ Ct. Costs <input checked="" type="checkbox"/> Attorneys Fees \$150.00/ Attorney/GAL Fees _____ Payment \$ _____ Mo/Wk Begin _____ / _____ /01 OR 1/2 monies earned <input checked="" type="checkbox"/> Review _____		
	Defendant advised rt. appeal, credit <u>time</u> served Appeal Bd. set \$ _____ JUDGE SALLY GREENHAW		
	<u>DMG</u>		

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

STATE OF ALABAMA,

Plaintiff,

v.

DAVID LEONARD WATKINS,

Defendant.

\*

\*

\*

\*


\*

CASE NO. CC-00-1506 GR

ORDER

The Court having found Defendant to be indigent, it is ORDERED that the Honorable Winston Durant is allowed to withdraw and the Honorable Kelly Vickers is appointed to represent Defendant in the above referenced matters on appeal.

DONE this the 22<sup>nd</sup> day of October, 2001.

  
SALLY GREENHAW  
CIRCUIT JUDGE

Pc:

Winston Durant  
Kelly Vickers  
District Attorney  
Court of Criminal Appeals  
Office of the Attorney General

RECEIVED

10-26-01  
CIRCUIT COURT CLERK

EXHIBIT-9

*Kelly Dean Vickers*

Attorney at Law  
P.O. Box 230803, Montgomery, AL 36123  
phone: 334-202-7750  
fax: 866-422-7026  
THIS IS THE DAY THE LORD HATH MADE  
LET US REJOICE AND BE GLAD IN IT

Inmate David Watkins  
Booking # 76489 Cell 4F  
Montgomery County Detention Facility  
P.O. Box 4599  
Montgomery, AL 36103

November 3, 2001

Re: Your Appeal

Dear David:

I have been appointed to represent you on the appeal you have filed in your criminal case. I have already reviewed your court file and noticed some things about your case that concern me. I don't know that we will be able to fix the past, but it was unfair that you had to wait so long to see an attorney and that you did not get a preliminary hearing—especially considering the seriousness of the original charge.

I have ordered a transcript of all your sessions in Court and copies of your court file. In the next week or so I will come to see you in jail. As soon as possible I need you to write down a list of the issues you feel need to be considered on the appeal. Of course I will be examining all the legal issues, but it is important to me to have your ideas on what needs attention. Of course if you get out on bond or get transferred to another facility notify me immediately so I have contact information on you at all times. I will also want names and numbers of family and friends who are helping you. I am sorry, but I can not accept collect calls from the jail; if you have an urgent matter arise have a friend or family member contact me.

In warmest regards,

*Kelly Vickers*  
Kelly Vickers

THE PRECEDING IS CONFIDENTIAL AND PROTECTED UNDER THE ATTORNEY-CLIENT PRIVILEGE.  
ANY MISUSE OR IMPROPER DISSEMINATION OF THE FOREGOING SHALL BE IMMEDIATELY DEALT WITH  
BOTH CRIMINALLY AND CIVILLY AS PERMITTED BY LAW.

EXHIBIT-10

11-14-2001

Dear Kelly:

I'm writing in response to the letter sent concerning my appeal. I know that this is a very serious offense but I don't feel I should have recieved the maximum for my involvement in this case. The state had all the evidences they needed to convict the trigger person and prove my innocence but instead let me be convicted of a crime I didn't commit.

But here's a list of some of the issues I have giving some thought to:

- 1) I feel that my intoxicated statement was a violation to help gain a conviction.
- 2) There were witnesses who could have help prove my innocence when I had no knowlege of at trial.
- 3) There wasn't a weapon presented at trial so how did the state exercise a gun law for Murder.
- 4) The Complicity Law wasn't pass until after this crime was committed so how could it be used against me.
- 5) According to ALA Rules 32 A-5 A conviction obtained by a violation of the privilege against self-incrimination is grounds for a appeal.

There are a few other issues that I would like to discuss in person as for as Sentence reduction and etc

Submitted,

David Watkins

EXHIBIT-11

Copy

1-6-2002

Dear Kelly Vickers:

I am writing again in concerns of my appeal situation. I am currently incarcerated at Kilby Correctional Facility. I'm anxiously awaiting to see and hear what you've found in the transcripts you've ordered from the Court Files. Are there any hopes of getting the appeal granted on the sentence reduced considering the truth is out in the open and evidents at Latoya's trial proves that I am not the guilty person the state is trying to place me as. And I still feel like the state shouldn't have been aloud to use my intoxicated statement to convicted me of this crime. Because if that statement was to be used to convict some other person, it would have probably been inadmissable in court. Well Mr. Vickers I am looking forward to your visit. I really need to know if something can be done about this case. I have arranged for my sister to call so she may be aware of what's taking place so she can tell the rest of my family that's living in Lowmes County. Her name is Demisha Watkins. Thanks for your concerns to this matter.

Respectfully Submitted,  
David L. Watkins  
David L. Watkins

EXHIBIT-12  
Copy

2/10/02

Dear Mr. Vickers

I'm writing because you told me you ordered a transcript of all my sessions in Court and of my court file. You also said in the next two weeks or so you'd come to see me in jail - now that was at least 3 months ago and I haven't seen you or so much as a letter from you. And all I want to know is what type of grounds are you basing the appeal on and which appeal are we requesting for (Sentencing or charge) but you're giving me the impression that it's not important to you.

So now I just want to let you know you've had more than enough time to give me some type of information and I think it's only fair to inform you that you have approximately 3 working days from tomorrow before I file a complaint to Alabama State Bar Asso. for neglecting your client. I rather not proceed with these actions but you have left me no other choices.

Sorry it has to be this way, but I'm sure it no worst then the situation I'm in.

Your Client,

David L. Watkins  
David L. Watkins





THE LAW FIRM OF VICKERS & ASSOCIATES

**KELLY VICKERS**

ATTORNEY AT LAW

100 Commerce St., Suite 900

Montgomery, AL 36104

Phone: 334-202-7750—Fax: 334-263-7782

February 14, 2002

Inmate David Watkins, AIS: 219698

Draper Correctional Center

P.O. Box 1107

Elmore, AL 36025

**Re: Your Appeal**

Dear David:

I received your threatening letter today. I had sent a letter and a copy of your appeal to Kilby—where you last wrote me from. Please let me know whether those mail items have reached you. If not I can send everything again.

On an appeal we have the opportunity to ask the appeal court to reverse or remand your case—if, and only if, your trial attorney preserved errors and those errors made by the court warrant such a reverse or remand. Unfortunately your trial attorney rarely objected to any issue to give us something to appeal. The key error I raised to the appeals court is that the jury should have been given an option to find a lesser included offense—manslaughter, and the jury should have been advised by the judge regarding the law on intoxication. Your trial attorney did not object or otherwise preserve these errors so I had to ask the appeal court to reverse on these issues on the "plain error doctrine." I would say you have a fifty-fifty chance this will work to get you another trial. There were other issues that would have been relevant had your attorney objected, but we can't bring them up since he didn't. You can raise those issues after the appeal process is over in a Rule 32 motion. I will tell you more on that later if we lose in the appeals court. I will be sure to keep you notified of any news. The next thing that will happen is we will get a reply brief on our appeal from the Attorney General's office.

I pray you and yours are well.

In warmest regards,

*Kelly Vickers*  
Kelly Vickers

EXHIBIT-14 14

2-27-02

Dear Mr. Vickers

I would first like to apologize for the threatening letter that I sent but at the time I didn't know you sent a copy of the appeal to Kilby - because I didn't receive anything from you since the first letter I ever got from you. So I'm sorry for <sup>the</sup> misunderstanding and I would like to have copies from the court transcripts so I may view them for myself.

On the appeal I've been reading over the copies that you sent and I noticed on (page 7 - Statement of the Issues) there's nothing concerning Winston Durant and for live assistance as my counsel and I think better yet I know that's a big issue and I hope it's included in the appeal. However I've been wondering if you've also included some of the <sup>other</sup> issues I've written from Rule 32 Post-Conviction Remedies in my first letter I wrote from Montgomery County Detention Facility which includes:

Rule 32.1; (e)(1) The facts relied upon were not known by petitioner or petitioner's counsel at the counsel at the time of trial or sentencing or in time to file post-trial motion pursuant to Rule 24, or in time to be included in any previous collateral proceeding and could not have been discovered by any of these means through the exercise of reasonable diligence; - there more that goes along with that grounds (1-5)

Well that's about all for now and I will continue to keep in touch once I receive the trial transcripts



EXHIBIT-15



The VICKERS law firm  
**KELLY VICKERS**

*Attorney at law*  
100 Commerce St., Suite 900  
Phone: 334-834-6639—Fax: 334-263-7782  
Montgomery, AL 36104

November 21, 2002

**Inmate David L. Watkins (AIS #219698)**  
C6/B83  
Draper C.C.  
P.O. Box 1107  
Elmore, AL 36025-1107

Dear David;

I sincerely apologize for the delay of contact. It has never been my intention to leave you in the dark about matters concerning your case. You most certainly have not fallen through the cracks and I have not forgotten you.

At this moment I have my staff preparing the documents that you requested. Bare with me it might be after Thanksgiving before it reaches you. I just wanted you to know that we are working diligently on your behalf.

God bless you and yours.

A handwritten signature in cursive script, appearing to read 'Kelly Vickers'.

Kelly Vickers

EXHIBIT-16

3-18-04

Dear Mr. Vickers:

It is been over a year and three months since I heard any news concerning my appeal. Mr. Vickers, how long does it take the Appeals Court to return a response?

Furthermore, when I wrote you Nov. 2002, I requested a copy of my Court Transcripts, in which you promised to send. Well, I never received them and my request is still the same.

Mr. Vickers, I look forward to receiving a response from you soon. In addition I also look forward to receiving the requested materials.

Thanks for your time, cooperation, and prompt response.

Sincerely,

David Watkins  
David Watkins #21969  
P.O. Box 1107 ~~Box #607~~  
6 Cell Bed 26  
Elmore, AL 36025

EXHIBIT - 17

## Court of Criminal Appeals

State of Alabama  
Judicial Building, 300 Dexter Avenue  
P. O. Box 301555  
Montgomery, AL 36130-1555

March 31, 2004

H. W. "BUCKY" McMILLAN  
Presiding Judge  
SUE BELL COBB  
PAMELA W. BASCHAB  
GREG SHAW  
A. KELLI WISE  
Judges

Lane W. Mann  
Clerk  
Wanda K. Ivey  
Assistant Clerk  
(334) 242-4590  
Fax (334) 242-4689

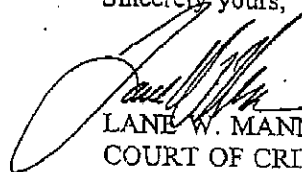
Mr. David L. Watkins  
AIS #219698  
P. O. Box 1107  
Elmore, AL 36015-1107

RE: CR-01-0232  
David Leonard Watkins v. State

Dear Mr. Watkins:

This is in response to your letter inquiring about your appeal. Please be advised that your case was affirmed by memorandum on April 19, 2002. The certificate of judgment was issued on May 7, 2002, thereby concluding your appeal.

Sincerely yours,

  
LANE W. MANN, CLERK  
COURT OF CRIMINAL APPEALS

LWM/jz

cc: Honorable Kelly Dean Vickers  
P. O. Box 230803  
Montgomery, AL 35123-0803

EXHIBIT-18

**THE VICKERS LAW FIRM  
KELLY VICKERS, ATTORNEY**

Mail: P.O. Box 230803, Montgomery, AL 36123  
Office: 100 Commerce Street, 9<sup>th</sup> floor above the bank  
Phone: 334-834-6639—Fax: 334-262-0936

April 2, 2004

*David L. Watkins, AIS # 219698*  
P.O. Box 1107  
Elmore, AL 36015-1107

Re: Appeal


Dear David:

The Court of Criminal Appeals sent me a copy of the letter they just sent you about your appeal. My records show that we sent out a copy of the court's decision back in April of 2002. Based on the fact you sent an inquiry to the Court of Criminal Appeals I see you may not have received everything we have sent you. I am enclosing a copy of the Appellate Court decision. I am also enclosing a copy of your transcript. If there is anything else you need me to send you please let me know.

You still have one recourse left, a rule 32 petition, but you need to file it immediately—before April 19 if possible. Most attorneys charge several thousand dollars to do one, but I have seen many inmates do it themselves. My previous appointment does not include services for a rule 32, but I will certainly make sure you have everything I have in your file to help you. I will also answer any questions you may have about the process.

May God bless you and yours.

With warmest regards,

  
Kelly Vickers

**Toll Free: voice: 1-866-399-2990 fax: 1-866-422-7026**  
**email: [kv@kellyvickers.com](mailto:kv@kellyvickers.com)**

EXHIBIT-19

THE VICKERS LAW FIRM  
KELLY VICKERS, ATTORNEY

Mail: P.O. Box 230803, Montgomery, AL 36123  
Office: 100 Commerce Street, 9<sup>th</sup> floor above the bank  
Phone: 334-834-6639—Fax: 334-262-0936

April 2, 2004

David L. Watkins, AIS # 219698  
P.O. Box 1107  
Elmore, AL 36015-1107

Re: Appeal docs

Dear David:

I sent you by separate package a copy of the transcript and other documents from your appeal. Please write me and confirm that it got to you. It was good size box, and the DOC staff may be inspecting it. I don't want any delays in your getting what you need.

May God bless you and yours.

With warmest regards,



Kelly Vickers



Toll Free: voice: 1-866-399-2990 fax: 1-866-422-7026  
email: [kv@kellyvickers.com](mailto:kv@kellyvickers.com)

**IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA**

**David Watkins,**

**Petitioner,**

**VS.**

**State of Alabama,**

**Respondent.**

**CASE NO. CC-2000-156.60**

1506.60

**ORDER**

This cause is before the Court on Petitioner's request that filing fees be waived due to his substantial hardship status, and the same having been considered, it is ORDERED that Petitioner is granted permission for filing of the petition in this cause without immediate payment of a filing fee.

Done this the 13 day of August 2006.

**Truman M. Hobbs, Jr.**  
**Circuit Court Judge**

cc: David Watkins

**RECEIVED**  
8-16-06  
CIRCUIT COURT CLERK

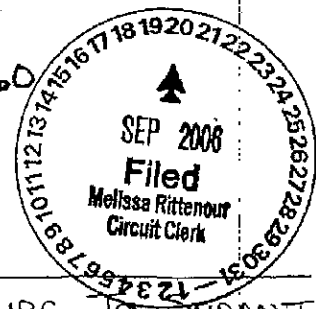
IN THE CIRCUIT COURT OF MONTGOMERY ALABAMA

✓ David L. Watkins

vs.

State of Alabama

CASE NO: 00-1506.60



PETITIONER OBJECTION TO THE STATE'S FAILURE TO SUBMIT  
A TIMELY CONTROVERTING AFFIDAVITS, TIMELY MOTION TO  
DISMISS RULE 32 PETITION AND PETITIONER REQUEST FOR ORAL  
ARGUMENT.

Comes now, the Petitioner pro-se, and without the benefit of a Counsel, respectfully make an objection to the State's failure to submit a timely controverting affidavits and a timely motion to dismiss, for pleading any and all grounds of preclusion of Petitioner Rule 32 petition, that the State is relying on.

Grounds

- 1) Petitioner submitted Rule 32 petition and supporting affidavits; exhibits no later than July 26, 2006. Which the State has not respond to as required by Ala. Rules. Cr. P., 32.3.
- 2) Petitioner contends that by A.R. Cr. P., 32.3, the State is required to plead the ground or grounds of preclusion that it believes apply to the petitioner's case; thereby giving the petitioner the noticed he needs to attempt to formulate arguments and present evidence to "disprove the existence of those grounds by a preponderance of the evidence. A general allegation that merely refers to the Rule does not provide the type of notice necessary to satisfy the requirements of due process and does not meet the burden of pleading assigned to the State by Rule 32.3 Cited from Ex Parte Rice 565 So. 2d 606, 608 (Ala. 1990)
- 3) Petitioner contends by A.R. Cr. P., Rule 32.7(a) Prosecutors Response, states:

"With 30 days after the service of the Petitioner or within the time otherwise specified by the Court, the district attorney shall file with the Court and send to the petitioner or counsel for the petitioner if any, a response. Which may be supported by affidavits and a certified record or such portions thereof as are appropriate or material to issues raised in the petition.

4) Petitioner contends that the state has fail to comply with A.R.Cr.P. Rule 32.7(a) by not responding in a timely manner to petitioner's Rule 32 petition. Had the state filed with the Court a response as required by Rule 32.7(a), Petitioner should have received the state's allegation back in August or the first week in September.

5) Therefore, the petitioner makes an objection to the state's failure to file a timely response to petitioner's Rule 32 petition and makes an objection to the state's failure to submit a timely controverting affidavits as of grounds that the state has in effect waived all grounds of preclusion, by the state's failure to make a timely objection, submitting a timely controverting affidavits an motion to dismiss Rule 32 petition, without good cause shown by the state for their failure to file those documents on time, would be prejudice to the Petitioner. Because the petitioner has made a timely objection to the state's waiver and Petitioner have submitted supporting factual documents with his Rule 32 petition and affidavit, (Exhibits - Trial's Transcript, Attorney's letters, motions - ect) without the state's controverting affidavit and motion to Dismiss Petitioner's Rule 32 petition, petitioner evidence outweighs the states in which a Rule 32 petition is decided by the preponderance of the evidence. Therefore the petitioner is entitled to relief of his conviction and sentencing an should be rendered a new trial and/or sentencing.



Relief Sought

Therefore, Petitioner request the following:

- 1) That Petitioner be allowed access into the Court in order that his petition be held. Furthermore, the Court has not dismissed the petitioner's petition. Therefore, petitioner is entitled to an evidentiary hearing to determine disputed issues of material fact as required by A.R.C.P., 32.9 Evidentiary Hearing.
- 2) However, if the Court see otherwise, Petitioner ask that respondent within (7) days, file and serve a response to the motion, showing good cause why they should be allowed to file an out-of-time response to dismiss Petitioner's Rule 32 petition and controverting affidavits.
- 3) That the Responses be in the form required for motions and if no response is filed, within (7) days the motion shall be deemed submitted on the record before the Court, and the respondent be deemed to have waived all grounds of pleading preclusion.
- 4) Petitioner contents, do to the complication of this case, request for an oral Argument on this matter.

PLACE IN THE HANDS OF THE HONORABLE CIRCUIT CLERK  
OF MONTGOMERY COUNTY.

Respectfully Submitted,  
David L. Watkins

9-18-06



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

STATE OF ALABAMA  
Plaintiff,

v.

DAVID LEONARD WATKINS  
Defendant

Case Number: CC 00-1506<sup>100</sup>

MOTION FOR EXTENSION

COMES NOW, the State of Alabama by and through the District Attorney for the Fifteenth Judicial Circuit of Alabama, Eleanor I. Brooks, and requests this Honorable Court to grant an extension in the above-styled case, and as grounds states the following:

1. The Defendant filed a Rule 32 Petition in the Circuit Clerk's Office 07/27/2006.
2. The District Attorney's Office received that petition on 8/22/06 and has 30 days to reply.
3. Due to it being a grand jury week and preparation for a murder case before the Honorable Judge Shashy on next week, the State requests an additional seven days to respond to the petition.

WHEREFORE, premises considered, the State moves this Honorable Court to continue this matter.

Respectfully submitted this the 21st day of September, 2006.

ELEANOR I. BROOKS  
DISTRICT ATTORNEY

By: *A. Taylor*  
Azzie Taylor (MEL 020)  
Deputy District Attorney



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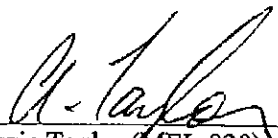
GRANTED

DATE

TRUMAN M. HOBBS, JR.  
CIRCUIT JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing motion upon the Defendant and/or his Attorney by placing a copy in the mail or by placing a copy of the same in the Courthouse box, this the 21st day of September, 2006.

  
Azzie Taylor (MEL 020)  
Deputy District Attorney

Tah

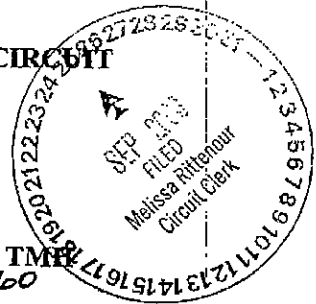
IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT  
MONTGOMERY COUNTY, ALABAMA

DAVID LEONARD WATKINS,  
Petitioner,

v.

STATE OF ALABAMA,  
Respondent.

Case No: CC 00-1506 TME



**STATE'S MOTION TO DISMISS OR IN THE ALTERNATIVE ANSWER TO  
DEFENDANT'S PETITION FOR RELIEF FROM CONVICTION OR  
SENTENCE**

Comes now the State of Alabama, by and through its District Attorney for the Fifteenth Judicial Circuit, Eleanor I. Brooks, and responds to the "Petition for Relief From Conviction or Sentence" filed with this Honorable Court by the above named Defendant. The State respectfully asks this Honorable Court to DISMISS the Defendant's petition, and as grounds therefore would show:

**PROCEDURAL HISTORY**

The Petitioner was indicted by the Montgomery County Grand Jury on September 15, 2000, for one count of Murder. The petitioner pleaded not guilty on August 1, 2002 and the case was set for trial for May 14, 2001 and on May 15, 2001, the Petitioner was found guilty of Murder. On October 22, 2001, the Petitioner was sentenced to life in the Department of Corrections. Petitioner now files this Rule 32 petition. Hence the State's Answer follows:

**GROUND FOR RELIEF**

As the basis for this petition, Petitioner alleges the following grounds in support of his petition:

- I. **PETITIONER ARGUES THAT HIS APPELLATE COUNSEL WAS INEFFECTIVE BECAUSE HE FAIL TO PRESERVE THE ISSUE OF THE DENIAL OF THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL.**

Petitioner alleges that his trial counsel, as well as his appellate counsel were both ineffective attorneys throughout his trial and appeals process. He charges his trial counsel as being ineffective because the trial counsel failed to submit a written request that the Court instruct the jury on a lesser included offense regarding intoxication. He avers that the evidence undisputedly reflects that he, his co-defendants and the victim were drinking heavily and likely intoxicated at the time of the alleged murder. He further avers that because of this, the jury should have been instructed on the lesser offense of manslaughter. The petitioner quotes several cases, some of which are just not relevant to the issue or case name does not match the citation. He relies in part on *Moore v. State of Alabama*, 647 So.2d 43 which the Court and he quotes "When the crime is charged involves specific intent, such as murder, there is evidence of intoxication the trial judge should instruct the jury on the lesser included offense of manslaughter." The case goes on to say that a defendant is entitled to a charge on a lesser included offense if there is any reasonable theory from the evidence.

After reviewing the transcript, the issue of intoxication at the time was not raised by the defendant during trial. The defendant testified and he raised the subject of drinking and smoking only prior to his arrest and statement to the police. That theory did not evolve during the State's case nor the defendant's case. The State of Alabama argues that intoxication prior to committing the offense was not a reasonable theory that was derived from the evidence in this trial and the jury was instructed properly by the Court. He further alleges that his trial attorney was ineffective because he failed to request that the court instruct

the jury on intent to kill regarding accomplice liability. According to the transcript, the Court gave the standard jury instructions on the charge of Murder, which included the language on intent.

The Defendant's claim that his appellate attorney was ineffective because he failed to raise the claim of ineffective assistance of the trial attorney during his appeal. The State contends that for the above reasons the appellate attorney had no grounds on which to raise that issue.

**II. THE PETITIONER CONTENDS THAT THE INDICTMENT WAS DEFECTIVE BECAUSE IT WAS NOT SPECIFIC.**

The petitioner argues that the indictment uses generic terms and was not specific enough to allow him to prepare his defense. The State argues that the indictment meets the requirements of the law by setting forth the elements of the offense and it sufficiently apprised the defendant of what he must be prepared to meet.

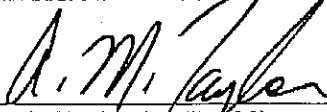
**STATE'S RESPONSE TO PETITIONER'S GROUNDS FOR RELIEF**

For the above reasons, this Petition is barred and the Petitioner is not entitled to the relief requested. Therefore, the State of Alabama would move this Honorable Court dismiss, with prejudice, the Petitioner's Rule 32 petition and deny any and all relief requested.

Respectfully submitted on this the 25<sup>th</sup> day of September, 2006.

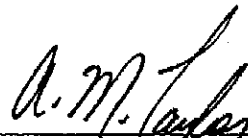
ELEANOR I. BROOKS  
DISTRICT ATTORNEY

By:

  
Azzie Taylor (MEL 020)  
Deputy District Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing motion upon the Defendant and/or his Attorney by placing a copy in the mail or by placing a copy of the same in the Courthouse box, this the 25<sup>th</sup> day of September, 2006.



Azzie Taylor (MFL 020)  
Deputy District Attorney



STATE OF ALABAMA,

Plaintiff,

VS.

DAVID WATKINS

Defendant.

\* IN THE CIRCUIT COURT OF

\* MONTGOMERY COUNTY, ALABAMA

\*

\*

\* CASE NO. CC-00-1506-TMH

**ORDER**

It is hereby ORDERED that this matter be and the same is hereby set for a hearing on Rule 32 Petition on October 12, 2006 at 10:30 a.m., Courtroom 3-A, Montgomery County Courthouse, 251 South Lawrence Street, Montgomery, Alabama.

DONE this the 25th day of September, 2006.

  
**TRUMAN M. HOBBS, JR.**  
**CIRCUIT JUDGE**

Copies to:

District Attorney: Azzie Taylor

Attorney for Defendant: Winston Durant

Attorney for Defendant: Kelly Vickers  
P O Box 230803  
Montgomery, AL 36123

Defendant by mail : AIS# 219698  
P O Box 1107  
Elmore, AL 36025

ymlt

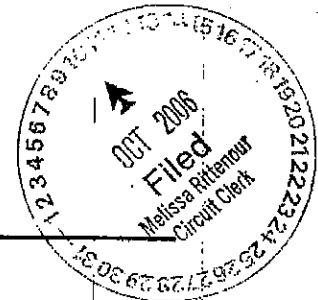
CC 00-1506.60

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMADAVID L. WATKINS  
PETITIONER

V.

STATE OF ALABAMA  
RESPONDENT

CASE NO: CC-1506

AFFIDAVIT IN SUPPORTSTATE OF ALABAMA  
COUNTY OF ELMORE

SS: Affidavit of David L. Watkins

Before me, the undersigned Notary Public in for said State and County, personally appeared before David L. Watkins whom is know to me as such, first being duly sworn and deposes and states the following:

I am the Petitioner named here and the above style cause and make this affidavit in truth concerning specific facts that transpired in my case. On Oct. 22, 1999, I was charged with Capital Murder in which I was arrested and placed in the custody of Montgomery County Jail. On September 15, 2000, the Grand Jury of Montgomery County later indicted me on the Charge of "Intentional Murder in violation of §13A-6-2 of the Code of Alabama, 1975. On September 28, 2000, the court appointed Winston Durant as my defense counsel, whom is known to me to be a registered member of the Alabama Bar Association. Mr. Durant interviewed me at the pre-trial stage, which he informed me that it would be a good idea to plead guilty to the charges against me. I informed Mr. Durant that the charges against me are not true and that I deserved a fair chance to tell my side of the story. I did not intentionally cause the death of John Ferrell,


and that his death was not caused by any act or acts on my part. His death was caused by a gunshot wound to the head, by a co-defendant, which was also charged with the same exact crime. I, while under the influence of alcohol, admitted that I did in fact assault the victim. But, it was the vicious act of my co-defendant that discharged the firearm that resulted in his death. I also informed my counsel, as well as the law-enforcers, that I did everything in my power to prevent the crime from happening. Neither, did I cause the crime to go further than the assault, because, the crime was taking on a new undertaking which was outside of my objective or purpose. These same facts or allegations were made in a taped statement given by me, (while under the influence of alcohol – which the officers of Montgomery Police Department never performed any tests to determine to what degree (or) level my intoxication was). Still, the State of Alabama believed that I helped commit the crime of murder. Mr. Durant without my permission (or) consent waived the preliminary hearing, and forfeited my right to a preliminary hearing.

Furthermore, Mr. Durant never retained a private investigator nor did he conduct any forensic analysis or tests. He relied solely on the State's evidence during trial in which he subpoenaed only one witness to verify that I was intoxicated at the time the arresting officer apprehended me. I also would like to point out the fact that Mr. Durant never conducted any pretrial investigations whatsoever. Because there is no proof in the Court records and exhibits admitted at the trial. Since Mr. Durant is a known, registered, member of the Alabama Bar Association – it should have occurred to him that these types of procedures should take place in order to increase the possibilities of the truth emerging during his client's trial.

fact Kelly Vickers' response was that he/she thought they had informed me because their records indicate that fact. This is almost (2) years after my appeal had been affirmed, in fact, I did not receive a copy of the trial's transcript until April 2, 2004. I would also like to point out the fact that, I have no knowledge whether or not Counsel Vickers has heard the taped statement given by me to the law enforcement officers. If so, I still have not received it from the counsel.

Due to this counsel's negligence, I was not able to file a proper Rule 32 Post Conviction Relief in the subscribed manner in which the Rules of Court requires. In conclusion, I again, sincerely believe that had Kelly Vickers given me the effective assistance, which is required by law, the outcome of this appeal would have been different.

AFFIANT FURTHER SAYETH NAUGHT

  
David L. Watkins  
Affiant

Sworn to and subscribed before me this 5 day of Oct, 2006.

3/06  
My commission expires

  
Notary Public

TMH

CC 00-1506-60

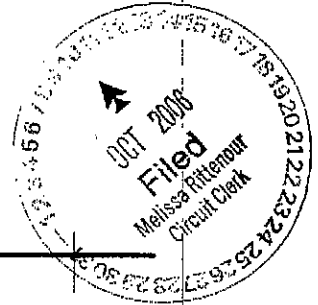
IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT  
MONTGOMERY COUNTY, ALABAMA

DAVID L. WATKINS  
PETITIONER

V.

STATE OF ALABAMA  
RESPONDENT

CASE NO: CC 00-1506



TRAVERSE

Comes now, the above Petitioner pro-se; and without the benefits of a counsel, and respectfully responds to the State's Motion to Dismiss, or in the Alternative Answer to Defendant's Petition for Relief From Conviction of Sentence. The Petitioner does not concede any of his arguments, they are well founded on facts and law, and as grounds shows unto this Honorable Court as follows.

1.) The State contends that the Appellant Counsel for the Petitioner had no grounds on which to raise the issue of intoxication and that the issue of intoxication at that time was not raised by the defendant during trial. This is one of the reasons Appellant Counsel should have raised ineffective assistance of trial counsel in his arguments on direct appeal. Because Appellant Counsel stated in his Statement of Facts in his brief that:

"On or about October 19, 1999, Appellant David Watkins, was playing cards and listening to music with the other two co-defendants and the victim when a fight broke out. (R 38-41, 186-193) They were all drinking. (R 40, 191) (See Counsel's Appellant Brief pg.6)

The law states in *Gray v. State* 482 So.2d 1318, 1319 [Ala.Crim.App.1985]

“When the crime charged involves specific intent, such as murder, and there is evidence of intoxication the trial judge should instruct the jury on the lesser included offense of manslaughter. (See also *McNeil*, 496 So.2d at 109, *Moore v. State*, 647 So.2d 43 [Ala.Cr.App.1994])

Furthermore, Appellant Counsel stated in his argument on direct appeal that:

“The chief evidence which convicted the Appellant was his taped statement.”

And also:

“The appointed trial counsel for the Appellant never filed any written motion whatsoever and rarely objected or otherwise attempted to preserve issues of potential error.”

Petitioner contends that his Appellate Counsel had every obligation under the requirements of law to protect his client. Appellate Counsel should have had a copy of both the trial's transcript and the taped “confession” in order to allege his allegations to the Appeals Court.

Furthermore, the decision of the Supreme Court of Alabama are to the effect that every accused is entitled to have charges given, which would not be misleading, which correctly state the law of his case, and which are supported by [any] evidence, however weak, insufficient, or doubtful in credibility. *BURNS v. STATE*, 229 Ala.68, 155 So. 561 (1934). ([Quoting]) *Ex Parte Long*, 600 So.2d 982 (Ala. 1992)

THIS IS CLEARLY A mistake on the Trial Counsel's part, but Appellate Counsel should have noted these facts and properly raised them before the Criminal Appeals

Court THEREFORE, PETITIONER RAISES INEFFECTIVE ASSISTANCE ON BOTH COUNSELS.

2.) The State of Alabama also contends that the Court gave the jury the standard jury instructions on the charge of Murder, which included the language on intent. (See State's Motion to Dismiss...at pg.1-2)

However, Petitioner contends that the court did in fact give instructions on murder, but the court did not properly instruct the jury on the particularize intent to kill issue with regards to accomplice liability.

In relevant part, the trial court charged the jury as follows:

"The law in Alabama, is that a person is legally accountable for the behavior of another person constituting a crime if with intent to promote or assist the commission of that crime he aids or abets such other person in committing the crime. There is no distinction between principals and accessories in the commission of an offense...etc. (See Petitioner's exhibit 3 at R. 270-71

In *Duncan v. State*, 827 So.2d 838, 848 (Ala.Crim.App.1999) the trial court correctly instructed the jury on the particularize intent to kill issue. Furthermore, the trial court correctly instructed the jury with regards to accomplice liability relevant part as follows:

"The mere presence of a defendant, who intends to assist with the criminal act, should it become necessary, is aiding and abetting if, and only if, the one who commits the act knows of the defendant's presence and the intent to assistance in [that] offense."

As shown from (Petitioner's exhibit 3 at R. 270-71) the trial court did not clearly charge the jury on the essential element that the principle has to be aware of the accomplice's support and willingness to lend assistance to kill the victim.

Also, Petitioner content as stated in (Reeves v. State, 530 So.2d 894) that the [key elements of accomplice liability] are encouragement or presence with a view to render aid should it become necessary. When liability is predicated on the latter, it is essential that the principle be aware of the accomplice's support and willingness to lend assistance.

Therefore, since in this present case the key element the principle knew that the Petitioner was assisting him to kill is absent from the court's oral charge the jury could not intelligently comply with their duty as Jurors. Moreover, the prosecution were relieved of finding [every] element of the charge offense beyond a reasonable doubt.

While the state is relying solely upon the standard jury instructions;

It has been well established, in the federal courts, that:

It will be observed that all those definitions have nothing whatsoever to do with the forbidden result would follow upon the accessory's conduct; and that they will demand that he in some sort, [associated] himself with the venture, that he [participated] in it as in something he wished to bring about, that he seek by action to make it succeed.

All the words used – even the colorless, abet – carry on implication of attitude towards it. See Hill v. State, Ala.Cr.App., 348 So.2d 848, 851



Considering these facts, in absence of such elements of aiding and abetting the Petitioner's counsel hurt Petitioner's defense. For this reason, Petitioner raises this claim as stated in his Rule 32 Petition.

3.) The State contends that the indictment meets the requirements of the law be setting forth the elements of the offense and it sufficiently apprised the defendant of what he must be prepared to meet.

WHEREFORE, Petitioner contends that his indictment is defective due to the indictment not being accompanied with such a statement of facts and cause of the accusation of the specific offense, coming under the general description in which Petitioner was charged.

Petitioner contends that the indictment below is defective in substance that it will not support the judgment of conviction. Indictment read as follows:

Omitting the formal parts, the indictment reads as follows:

The grand jury of said County charge that before the finding of the indictment.

David Leonard Watkins, alias

David L. Watkins, alias

David Watkins

Whose name is otherwise unknown to the Grand jury, and/or accomplice did intentionally caused the death of another person, John Ferrell, by shooting with a gun, in violation of section 13A-6-2 of the Code of Alabama (See Petitioner's Exhibit 7)

Again, Petitioner contends that the above indictment is defective in substance that it will not support the judgment of conviction.

Petitioner contends that his indictment is defective in substance that it will not support the judgment of conviction. In *Russell v. United States*, 8 L.Ed.2d 240, 251 The United States Supreme Court stated:

"It is an elementary principle of criminal pleading, that where the definition of an offense, whether it be a common law or by statute; includes generic terms, it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition; but it must state the specifics, - it must descend to particulars, an indictment not framed to appraise the defendant "with reasonable certainty to the nature of the accusation against him is defective although it may follow the language of the statute...

In the case at hand, the State contends that Petitioner committed the crime of intentional murder as an accomplice. However, the language of the indictment does not set forth the necessary means by which Petitioner committed the offense (*HORN\$BY v. STATE*, 94 Ala. 55, 10 So. 522; *Nelson v. State*, 50 Ala.App. 285). In order to properly inform the accused of the nature and cause of the accusation, within the meaning of the constitution and of the rules of common law, not only must all the elements of the offense be stated in the indictment, but that also they must be stated with clearness an certainty, and with a sufficient degree of particularity to identify the transaction to which the indictment relates as to place, persons, things and other details.

At common law, it was necessary to set forth in an indictment for murder the means by which an offense was committed. (HORNSBY v. STATE, 94 Ala. 55, 10 So. 522; Nelson v. State, 50 Ala.App. 285)

An indictment must state the facts constituting the offense, in ordinary and concise language, in such a manner as to enable a person of common understanding to know what is intended. It must likewise inform the accused not only of the nature of the offense, but also of the particular act or means by which it was committed. (See Ala. Code 1975 Title 15-8-25. Indictment)

An indictment must also enable the defendant to enter a plea that will bar any "future prosecutions for the same offense." (Hamling 418 U.S. at 117 94 S.Ct. at 2907.)

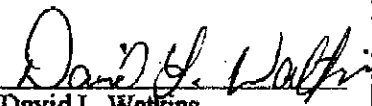
However, this indictment charges that Petitioner "did as an accomplice, intentionally caused the death of another, by shooting with a gun."

(See Petitioner's exhibit 7) Petitioner is apprised of the charges against him to this extent but he could not know the contentions of the state as to how he committed murder. Under the law, a person acts intentionally when it is his purpose to cause the death of that person. An intent may be inferred from the facts and circumstances surrounding the whole transaction or incident as well as the conduct of the defendant.

Therefore, this conviction cannot stand, because it offends the first requirement of the constitutional due process. Furthermore, the State's arguments are without merit to show this court what their evidence intends to prove.

The kind of defects shown by Petitioner, according to the due Process of law, cannot stand.

Petitioner respectfully urges this Honorable Court, for this reason, to reverse and remand for a new trial and sentence.

  
David L. Watkins  
Petitioner, pro-se

Sworn to and subscribed before me this 5 day of Oct, 2006.

2/06  
My commission expires

  
Notary Public

tmH

CC 00-1506.60

IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT  
MONTGOMERY COUNTY, ALABAMA

DAVID L. WATKINS  
PETITIONER

V.

STATE OF ALABAMA  
RESPONDENT

CASE NO: CC 00-1506



MOTION FOR SUBPOENA DUCES TECUM

Comes now the Petitioner, David L. Watkins, by and through himself in the above-styled cause respectfully moves the Court pursuant to Rule 16 Alabama Rules of Criminal Procedure of the entry of an order directing that the State of Alabama be returnable before the Court on or before 12<sup>th</sup> day of October, 2006, and further, directing that the books, papers, records and documents described in said subpoenas, upon their production, be available for inspection and/or copying by the named Petitioner.

In support thereof, movant state that the books, papers, records and documents described in the attached subpoenas are evidentiary in nature, that the Petitioner lacks access to these items from any other source, and that an order directing production of these items prior to an evidentiary hearing will expedite the hearing of this cause and facilitate the introduction of material and relevant evidence during the course thereof.

WHEREFORE, premises considered, the Petitioner prays that this Honorable Court shall make the entry of an order to require the opposing party to produce the requested materials.

Done this the 5 day of October, 2006

Respectfully submitted,

David L. Watkins  
David L. Watkins  
Draper Correctional Center  
P.O. Box 1107  
Elmore, AL 36025-1107

CERTIFICATE OF SERVICE

I hereby certify that on this 5 day of October, 2006, I did serve a copy of the foregoing on the following, by placing the same in the United States Mail, first class, postage prepaid and addresses as follows:

The Honorable Judge Truman M. Hobbs Jr.  
Circuit Court of Montgomery County  
Montgomery County Courthouse  
251 S. Lawrence St.  
P.O. Box 1667  
Montgomery, AL 36102-1667

Offices of Ellen Brooks  
District Attorney  
Fifteenth Judicial Circuit of Alabama  
Montgomery County Courthouse  
P.O. Box 1667  
Montgomery, AL 36102-1667

David L. Watkins  
David L. Watkins  
Petitioner, pro-se

Sworn to and subscribed before me this 5 day of October, 2006.

MY COMMISSION EXPIRES JAN. 8, 2008

My commission expires

Debra Rose  
Notary Public

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DAVID L. WATKINS  
PETITIONER

V.

STATE OF ALABAMA  
RESPONDENT

CASE NO: CC-1506

AFFIDAVIT IN SUPPORT

STATE OF ALABAMA  
COUNTY OF ELMORE

SS: Affidavit of David L. Watkins

Before me, the undersigned Notary Public in for said State and County, personally appeared before David L. Watkins whom is know to me as such, first being duly sworn and deposes and states the following:


I am the Petitioner in the above-entitled case and make this affidavit in good faith to support matters pursuant to a Rule 32 Proceeding.

On or about the 21<sup>st</sup> day of October, 1999, I was apprehended by the police of Montgomery Police Department for questioning concerning the murder of John Ferrell. The police took from me a taped statement, which was admitted into evidence as exhibit No.44, with the letter "A" written on its side. That taped statement contains proof that I, the Petitioner, was indeed intoxicated at the time that the crime was committed.

The State of Alabama has possession of that tape. I respectfully ask that the tape marked as Exhibit No.44 along with the videocassette be available for inspection at the hearing on October 12, 2006 at 10:30 a.m., Courtroom 3-A, Montgomery County

Courthouse, 251 South Lawrence Street, Alabama. I intend to prove by a preponderance of that taped statement that I am entitled to a new trial or sentence

AFFIANT FURTHER SAYETH NAUGHT!

  
David L. Watkins  
Affiant

Sworn to and subscribed before me this 5 day of October, 2006.

3/06  
My commission expires

  
Notary Public



APPENDIX

EXHIBIT A: AFFIDAVIT IN SUPPORT  
OF  
MOTION FOR SUBPOENA DUCES TECUM

**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY ALABAMA  
10<sup>TH</sup> JUDICIAL CIRCUIT**

**DAVID L. WATKINS**

**DEFENDANT**

**VS.**

**CASE NUMBER:  
CC-00-1506 .60**

**STATE OF ALABAMA**

**PLAINTIFF**

---

**MOTION TO SHOW CAUSE WHY THE NEW ROUNDS  
WERE NOT KNOWN OR COULD NOT HAVE BEE ASSCERTAINED  
THROUGH REASONABLE DILIGENCE WHEN FIRST PETITION  
WAS HEARD AND FAILURE TO ENTERTAIN THE PETITION  
WILL RESULT IN A MISCARRIAGE OF JUSTICE**

---

Comes now the Petitioner David L. Watkins, pro se, in the above styled cause, by and through himself and respectfully ask for consideration of this Motion Pursuant to Rule 32.2 (b)(A.R.Crim. P.) and Whitt v. State, 827 So.2d 869 (A.Crim.App. 2001).

**In Whitt v. State, The Court Held That:**

(" We now interpret 32.2 (b) as Federal Courts interpret Habeas Corpus Petitions to mean that new claims in subsequent Petitions are barred as being successive unless")  
The Petitioner shows both that good cause exist why the new grounds. Or grounds were not known or could not have been ascertained through reasonable diligence when the first Petition was heard, and that failure to entertain the Petition will result in a miscarriage of justice, Rule 32.2 (b) (Ala. R. Crim. P.).

**EXPLANATION FOR NEW GROUNDS OF RELIEF  
GOOD CAUSE WHY THE NEW GROUNDS WERE NOT KNOWN**

The Petitioner's Appeal Counsel filed Notice of Appeal and submitted brief on Direct Appeal on February 6, of 2002. Petitioner conviction had been affirmed on April 19, of 2002.

Petitioner was not aware that his appeal was affirmed, because his Appellate Counsel was negligent in keeping him informed of the status of his appeal (and) failed to inform him (Petitioner) that his appeal had been ruled upon. In fact, Petitioner did not know his appeal was affirmed until almost two years later. (See Petitioner exhibits 15-17)

Petitioner contends that his exhibits will show that his Appellate Counsel led him to believe that his appeal was still alive month(s) after it had been affirmed; by quoting the following:

"You most certainly have not fallen through the cracks and I have not forgotten about you."

"I just wanted you to know that we are working diligently on your behalf."

This was almost 7 months after Petitioner's appeal had been affirmed. (See Petitioner exhibit 15). Petitioner after not receiving information from his counsel wrote the Honorable Criminal Courts of Appeals on March 13, 2004 and received information about his appeal and learned that his conviction had been affirmed on April 19, 2002. (See Petitioner's exhibit 16-17)

Because, Appellate Counsel failed to inform Petitioner the outcome of his appeal, the Petitioner was not able to continue his appeal. In fact, Petitioner did not receive a copy of his trial's transcript until April 2, 2004. (See Petitioner exhibits 18-19) This is two (2) years after his appeal had been affirmed, well past the two (2) or one (1) year limitation period in which to file a proper Rule 32 Post-Conviction Remedy petition.

Additionally, the Petitioner himself is not learned in the law, the Sixth Amendment stands, as the defendant shall not be bound by the errors of his counsel. See *Strickland v. Washington*, 466 US 688, 104 S.Ct. 2052, 80 L.Rd.2d 674 (1984).

Moreover, the power of an attorney is not co-equal, co-extensive, or equivalent of that of the client. The realistic recognition of the obvious truth is that the average Petitioner does not have the professional skill to recognize a constitutional violation that resulted in his liberty being deprived from him without due process of law. That which is simple, orderly and necessary to the experience and learned counsel, but to the untrained layman, may appear intricate, complex and mysterious. The right to be heard in a Rule 32 petition is of little avail because it does not comprehend the right to be heard by effective counsel. "Even the intelligent and educated layman has small and sometimes no skill in the science of law. If convicted of a crime, he is incapable, generally of determining for himself, whether the indictment was good or bad, whether his constitutional rights were violated or whether he received effective assistance from his counsel. A layman is unfamiliar with the Rules of Evidence and Criminal Procedure." *Johnson v. Zerbst*, 304 US at 463

Therefore, a Petitioner lacks both the skills and knowledge adequate to prepare a proper Rule 32 petition whether it is in 2-years or 1-year. Even though he has perfect constitutional violations to raise in a Post Conviction Remedy.

**FAILURE TO ENTERTAIN THE PETITION WILL  
RESULT IN A MISCARRIAGE OF JUSTICE**

The Petitioner contends that the failure of this court to entertain this petition will result in a "miscarriage of justice". Black Law Dictionary defined *miscarriage of justice* as:

"Decision of outcome of a legal proceeding that is prejudicial or inconsistent with substantial rights of a party."

The United States Constitution, Article VI, C1. [2] states:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all Treaties made, or which in shall be made, under the authority of the United States, shall be the Supreme law of the land; and the Judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

The United States Constitution [Federal Constitution] has been expanded by the decision of the United States Supreme Court. See Black Law Dictionary, Due Process of Law, p. 500, 501 (6<sup>th</sup> ed. 1990).

In *City of Dothan v. Halloway*, 50 So.2d 1136, 1170, (Ala. 1986); the court then quoted from the Alabama Constitution (1901), §6, and they stated:

"The manifest purpose of this provision is to accord to every citizen security against the arbitrary action of those in authority, and to place him under the protection of the, 'law of the land,' which is synonymous with the expression, 'due process of law.'"

The United States Constitution Fourteenth Amendment states:

"No person shall be deprived of his liberty without due process of law."  
(equivalent or synonymous, "No person shall be deprived of his liberty  
without the Supreme Law of the Land.").

The word "shall" generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive. As used in statutes, this word is generally imperative or mandatory. *Guierrez De Martinez v. Lamago*, 132 L.Ed.2d 375, 393 (1995); also see, *State v. Redman*, 885 So.2d 850 (2004).

According to Article VI, C1. [3] of the United States Constitution; The Senators and Representative before mentioned, and the members of the several state, Legislatures, and all executive and judicial officers; both of the United States and of the several States, shall be bound by [oath] or Affirmation, to support this Constitution.

In Alabama, judicial officers took an oath of office; as follows:

I..., Solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Alabama. See Art. XVI, Sec. 279, Code of Ala. 1975.

In the United States Constitution Article VI, C1. [2], it clearly states that judges in every state shall be bound by the Supreme Law of the Land; anything in the Constitution or laws of any state, to the contrary notwithstanding. It is also clear from a reading of *Black Law Dictionary*, page 500-501, 6<sup>th</sup> Edition, 1990, the definition of "Due Process of Law" is that the United States Supreme Courts decisions are the "Supreme Law of the Land."

The United States Supreme Court in *Chessman v. Teets*, 11L.Ed.2d 1253, stated:

"The requirement of the Due Process Clause of the Fourteenth Amendment must be respected no matter how heinous the crime in question and no matter how guilty an accused may ultimately be found to be guilt has been established in accordance with the procedure demanded by the constitution. Evidently, it also needs to be repeated that the

overriding responsibility of this Court is to the constitution of the United States, no matter how late it may be that a violation of the Constitution is found to exist. This Court may not disregard the Constitution because an appeal in this case, as in other, has been on the eve of execution. We must be deaf to all suggestions that a valid appeal to the Constitution even by a guilty man comes too late, because courts, including this Court, were not earlier able to enforce what the Constitution demands. The proponent before the Court is not the Petitioner, but the Constitution of the United States."

In *Mooney v. Holohan*, 79 L.Ed.791, the United States Supreme Court noted:

"We are not satisfied, however, that the State has failed to provide such corrective Judicial process. The prerogative Writ of Habeas Corpus is available in the State Constitution of California, Art. I §5; Art. VI §4. No decision of the Supreme Court of California has been brought to our attention holding that the State Court is without power to issue this historic remedial process when it appears that one is deprived of his liberty, without due process of law in violation of the Constitution of the United States. Upon the State Court's equally with the Courts of the Union, rests the obligation to guard and enforce every right secured by that Constitution. In view of the dominant requirement of the fourteenth Amendment, we are not at liberty to assume that the State has denied to its Court jurisdiction to [redress] the prohibited wrong upon a proper showing and in an appropriate proceeding for that purpose.

A proceeding under [Rule 32] displaces all post-trial remedies except post-trial motions under Rule 24 and appeal. Any other post conviction petition seeking relief from a conviction or sentence shall be treated as a proceeding under this rule. Rule 32.4 (emphasis added)

"Rule 32 should not be viewed as foreclosing this important post-conviction remedy [habeas corpus] which is designed to do justice in those cases where there has been an injustice. *Salter v. State*, 606 So.2d at 211 (Ala.Cr.App. 1992)

Take note, Post-conviction relief is intended to eliminate confusion and avoid repetitious and successive applications for relief while [protecting] Petitioner's Constitutional rights. *Drayton v. State*, 600 So.2d 1088, 1090 (Ala.Cr.App. 1992).

A state may properly adopt neutral procedural rules to discourage frivolous litigation of all kinds, as long as those rules are not preempted by a valid federal law; however, a state may not relieve congestion in its courts by declaring a whole category federal claims to be frivolous. *Howlett v. Rose*, 496 US 356, 110 S.Ct 2430, 110 L.Ed.2d 332.

In *Ex Parte Ebbers*, 871 So.776, the Supreme Court of Alabama noted:

"The State-Court procedural considerations must at all times yield, however, to relevant federal constitutional principles, when state concerns for judicial economy conflict with federal constitutional rights, the state concerns must give away."

In *Pennzoil Co. v. Texaco Inc.*, 95 L.Ed2d 1, the United States Supreme Court noted:

Article VI, of the United States Constitution declares that the Judges in every State shall be bound by the Federal Constitution, laws, and treaties. [We] cannot assume that state judges will interpret ambiguities in state procedural law to bar presentation of federal claims."

This so being, the Petitioner contends that Alabama Rules of Criminal Procedure, Rule 32.2, preclusion of grounds do not apply to this petition, because the Petitioner



raises Federal Constitutional violations within this Rule 32 petition; in which after making a specific finding of fact, if 'merited on its face' the Petitioner is entitled to relief.

Moreover, in *Falkner v. State*, 586 So.2d 39, the Court of Criminal Appeals of Alabama noted:

"While Rule 20's (now Rule 32's) procedural bars should be followed to foreclose frivolous and repetitive allegations, they are not to be construed to procedurally foreclose a Petitioner from the remedy which he is due."

On the other hand, Rules of practice and procedure are devised to promote the end of justice, not to defeat them. A Rigid and undeviating judicially declared practice under which counts of review would invariably and under all circumstance decline to consider all questions which had not previously been specifically urged would be out of harmony with this policy. *Hornel v. Helvering*, 85, L.Ed. 1037. Because "[C]onventional notions of finality of litigation have no place where life or liberty is at stake and infringement of constitutional rights is alleged."

At the same time Petitioner note that while proceedings under Rule 32.2 "ordinarily cannot be used as a substitute for a direct appeal involving mere trial errors or as a substitute for a second appeal, "nevertheless" trial errors [affecting] Constitutional rights maybe raised even though (See *Kaufman v. United States*, 394 US at 228, 22 L.Ed.2d 227, 238, 89 S.Ct. 1068.) the error could have been raised on appeal. (*DROPE v. MISSOURI*, 420 US 162, 43 L.Ed 103, 95 S.Ct. 896)

Because, it is axiomatic that a conviction upon a charge not 'made' or upon a charge not 'tried' constitutes a denial of due process. *JACKSON v. VIRGINIA*, 443 US at 314 61 L.Ed.2d, at 570.

Therefore, the questions we face today is rather the Petitioner had a trial, because there is no trial without due process. *MACKENNA v. ELLIS*, 280 F.2d at 603. Petitioner contends that he had been denied any real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process. *SMITH v. O'GRADY*, 312 U.S. 329, 334, 61 S.Ct. 572, 85 L.Ed. 859.

Moreover, the Due Process Clause of the fourteenth amendment denies the States the power to deprive the accused of his liberty unless the prosecution proves beyond a reasonable doubt [every] element of the charged offense. Jury instructions [relieving] states of this burden violate a defendant's due process right. *Carella v. California*, 491 US at 265 (See Petitioner's EXHIBIT 3 at R.269-274).

At first blush it would seem that the law on this subject is in a sad state of flux. Be that as it may, these are rules of state practice and procedure. Otherwise stated, these are judge-made decisions. When rules of state practice and procedure conflict with the due process Clause of the fourteenth Amendment, they must yield to the commandments of the Amendment. In the words of the Supreme Court of the United States, "Conviction upon a charge not made would be sheer denial of due process." See *Nelson v. State*, cited at 50 Ala.App. 285, 289.

The Petitioner sole contention is that none of federal constitution violations raised in the petition was waived at trial, on appeal, or at any previous post-conviction remedies.

In *Barker v. Wingo*, 33 L.Ed.2d 101, the Supreme Court 'defined' waiver as:

"An intentional relinquishment or abandonment of a known right or privilege. Courts should indulge every reasonable presumption against waiver and they should not presume waiver from a silent record is impermissible.

The record must show, or there must be an allegation and evidence, which shows that an accused was offered counsel but intelligently and understandably rejected the offer. Anything less [is] not waiver. The Court ruled similarly with respect to waiver of other rights designed to protect the accused."

In *Green v. United States*, 2 L.Ed.2d 199, the United States Supreme Court, fatherly, noted:

"Usually no such waiver is expressed or thought of. Moreover, it cannot be imagined that the law would deny to a prisoner the correction of

a [fatal] error, unless he should waive other rights so important as to be saved by an express clause in the Constitution of the United States."

## CONCLUSION

The Constitutional mandate is addressed to the action of the State in obtaining a criminal conviction through a procedure that fails to meet the standards of due process of law. 'Unless a defendant charged with a serious offense has counsel able to invoke the procedural and substantive safeguards that distinguish our system of justice, a serious risk of injustice infects the trial itself when a state obtains a criminal conviction through such a trial it is the state that unconstitutionally deprives the defendant of his liberty.' Evitts v. Lucey, 83 L.Ed.2d 821, 829-30.

"Consistent with society's overriding concern with justice of finding of guilt." (United States v. Agurs, 427 U.S. [97] 112 [(1976)]), the Courts, as well as the prosecution, must be vigilant to correct a mistake. 'It is the State that tries a man, and it is the State that must insure that the trial is fair' (Moore v. Illinois, 408 U.S. 786, 810, 33 L.Ed.2d 706, 92 S.Ct. 2562 [(1972)] [Marshall J., concurring in part and dissenting in part]). Put another way, 'the State's obligation is not to convict, but to see that, so far as possible, truth emerges' (Giles v. Maryland, 386 U.S. 66, 98, 17 L.Ed.2d 737, 87 S.Ct. 793 [(1967)] [Fortas, J. concurring]). ([Quoted] in Dowdell v. State of Alabama, 854 So.2d 1195, 1198 (2002 Ala.Crim.App.).

That concern is reflected, for example, in the "fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free." (The maxim of the law is...that it is better that ninety-nine percent...offenders should escape, than that an innocent man should be condemned). See Schulp v. Delo, (1995) 513 US at 325 130 L.Ed.2d at 835, 115 S.Ct. 851.

The principle that no man shall be deprived of his liberty or property except by "the law of the land" is said to be more ancient than written constitutions, "and breathes so palpably of exactly Justice that it needs no formulation in the organic law." It is but an expression of the fundamental principle that inspired civilized man to form a government,

the ultimate purpose of which is to protect the individual in working out his destiny, and finds expression in our Constitution in these words:

"That in all criminal prosecutions, the accused has a right to be heard by himself and counsel, or either; and shall not be compelled to give evidence against himself, nor be deprived of life, liberty, or property except by due process of law, 'and' that every person, for an injury done him in his person, or reputation, shall have a remedy by due process of law, and right and justice shall be administered without sale, denial, or delay." Constitution of Alabama 1901. §§ 6, 13 [(Opinion by: Brown) in The State v. Bush, 68 So. 492, 493 (1915 Ala App.)]

Because, "under our system of criminal justice even a thief is entitled to complain that he has been unconstitutionally convicted and imprisoned as a burglar." Jackson, 443 US at 323, 24, 61 L.Ed.2d at 576.

Nevertheless, under the Federal Constitution, no court, State or federal, may serve as an accomplice in the [willful transgression] of the laws of the United States, laws by which judges in every state are bound under Article 6 of the Constitution. Lee v. Florida, 392 U.S. 378, 88 S.Ct. 2069, 20 L.Ed.2d at 1168.

Therefore, based on the foregoing, Federal Constitution Violations may be raised in a Post-Conviction Remedy at any time, unless the Petitioner has intentionally relinquished or abandoned those Federal Constitution rights or privileges; however, presuming waiver from a Silent Record is impermissible.

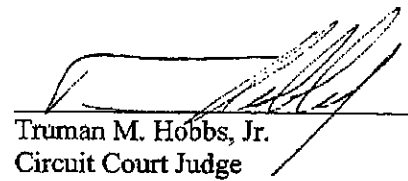
Accordingly, confidence in the outcome of the trial has been undermined, thereby, Petitioner was denied due process. That denial requires a reversal of his conviction and a new trial or other relief as the law requires.



Account and to deliver the same to the Clerk of this Court when the full amount has been collected.

Petition DISMISSED.

Done this the 18 day of October 2006.

  
Truman M. Hobbs, Jr.  
Circuit Court Judge

cc: David Watkins  
Azzie M. Taylor

TMH

CC 00-1506-60

## IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DAVID L. WATKINS  
PETITIONER

V.

STATE OF ALABAMA  
RESPONDENT

DENIED

DATE

CASE NO: CC-1506

TRUMAN M. HOBBS, JR.  
CIRCUIT JUDGEJ. D. D.  
Julissa Pittman  
Circuit ClerkMOTION TO ALTER, AMEND OR VACATE A JUDGMENT

Comes now Petitioner, pro se in the above styled cause, without the benefits of counsel and submit this request to the Honorable Court pursuant to Rule 59(e), Ala Civil.P asking this Court to postpone (or) set aside its judgment to hear Petitioner's arguments due to the following:

1. Petitioner filed a Rule 32 Petition and received a hearing on the 12<sup>th</sup> day of October 2006.
2. Petitioner contends that his Appellate Counsel was ineffective for his failure to raise the issue of, the denial of the effective assistance of trial counsel, due to trial counsel's failure to submit a written request that the trial court instruct the jury on a lesser included offense of manslaughter regarding intoxication; and failure to submit a written request that the trial court properly instruct the Jury on a particularize intent to kill issue with regard to accomplice liability.
3. Petitioner filed Motion For Subpoena Duces Tecum and affidavits respectfully asking that the State Of Alabama to submit a taped statement that was admitted into evidence at trial (marked as No.44 with the letter "A" written on its side) be available for



inspection at the hearing on October 12, 2006 at 10:30 a.m., Courtroom 3-A, Montgomery County. (See attached motion and affidavit as exhibits)

4. Furthermore, Petitioner filed his documents with certificate of service on the 5<sup>th</sup> day of October 2006 sworn and subscribed by both Officer Rose and Sgt. King Notary Public of Draper Correctional Facility.

5. However, the taped statement was not available for inspection which, at the time, was Petitioner's only and sole evidence in which to properly argue his claim of Ineffective Assistance of Counsel as required under Strickland.

6. Petitioner contends that had these documents reached the Circuit Court's Clerk in time, or had these documents been filed by the Clerk of Montgomery County, Petitioner could have properly addressed and proven, by a preponderance of the evidence, his claims.

7. Petitioner in furtherance, recognizes Houston v. Lack, 487 US 266, 101 L Ed 2d 245, 108 S.Ct 2379 to be proper remedy in which addressed this soon to be miscarriage of justice.

Petitioner prays that this Honorable Court reconsider its decision and take judicial notice and allow him to submit his issues along with the taped statement to address his claims properly as required under the U.S. Constitution.

Respectfully Submitted,

David G. Watkins  
Petitioner

Sworn and subscribed before me this 23 day of October 2006.

James Rose  
Notary Public

My Commission Expires March 25, 2008

My Commission Expires

IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT  
MONTGOMERY COUNTY, ALABAMA

DAVID L. WATKINS  
PETITIONER

V.

STATE OF ALABAMA  
RESPONDENT

CASE NO: CC 00-1506 .60

Shelley R. Hinton  
Circuit Clerk

MOTION FOR SUBPOENA DUCES TECUM

Comes now the Petitioner, David L. Watkins, by and through himself in the above-styled cause respectfully moves the Court pursuant to Rule 16 Alabama Rules of Criminal Procedure of the entry of an order directing that the State of Alabama be returnable before the Court on or before 12<sup>th</sup> day of October, 2006, and further, directing that the books, papers, records and documents described in said subpoenas, upon their production, be available for inspection and/or copying by the named Petitioner.

In support thereof, movant state that the books, papers, records and documents described in the attached subpoenas are evidentiary in nature, that the Petitioner lacks access to these items from any other source, and that an order directing production of these items prior to an evidentiary hearing will expedite the hearing of this cause and facilitate the introduction of material and relevant evidence during the course thereof.

WHEREFORE, premises considered, the Petitioner prays that this Honorable Court shall make the entry of an order to require the opposing party to produce the requested materials.

Done this the 5 day of October, 2006

Respectfully submitted,

*David L. Watkins*

David L. Watkins  
Draper Correctional Center  
P.O. Box 1107  
Elmore, AL 36025-1107

CERTIFICATE OF SERVICE

I hereby certify that on this 5 day of October, 2006, I did serve a copy of the foregoing on the following, by placing the same in the United States Mail, first class, postage prepaid and addresses as follows:

The Honorable Judge Truman M. Hobbs Jr.  
Circuit Court of Montgomery County  
Montgomery County Courthouse  
251 S. Lawrence St.  
P.O. Box 1667  
Montgomery, AL 36102-1667

Offices of Ellen Brooks  
District Attorney  
Fifteenth Judicial Circuit of Alabama  
Montgomery County Courthouse  
P.O. Box 1667  
Montgomery, AL 36102-1667

*David L. Watkins*

David L. Watkins  
Petitioner, pro-se

Sworn to and subscribed before me this 5 day of October, 2006.

MY COMMISSION EXPIRES JAN. 2, 2006

My commission expires

*Denise Rose*  
Notary Public

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DAVID L. WATKINS  
PETITIONER

V.

STATE OF ALABAMA  
RESPONDENT

CASE NO: CC-1506

FILED  
Melissa Pittman  
Circuit Clerk

AFFIDAVIT IN SUPPORT

STATE OF ALABAMA  
COUNTY OF ELMORE

SS: Affidavit of David L. Watkins

Before me, the undersigned Notary Public in for said State and County, personally appeared before David L. Watkins whom is know to me as such, first being duly sworn and deposes and states the following:

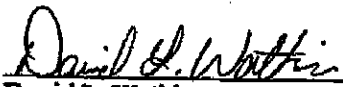
I am the Petitioner in the above-entitled case and make this affidavit in good faith to support matters pursuant to a Rule 32 Proceeding.

On or about the 21<sup>st</sup> day of October, 1999, I was apprehended by the police of Montgomery Police Department for questioning concerning the murder of John Ferrell. The police took from me a taped statement, which was admitted into evidence as exhibit No.44, with the letter "A" written on its side. That taped statement contains proof that I, the Petitioner, was indeed intoxicated at the time that the crime was committed.

The State of Alabama has possession of that tape. I respectfully ask that the tape marked as Exhibit No.44 along with the videocassette be available for inspection at the hearing on October 12, 2006 at 10:30 a.m., Courtroom 3-A, Montgomery County

Courthouse, 251 South Lawrence Street, Alabama. I intend to prove by a preponderance of that taped statement that I am entitled to a new trial or sentence

AFFIANT FURTHER SAYETH NAUGHT!

  
David L. Watkins  
Affiant

Sworn to and subscribed before me this 5 day of October, 2006.

3/04  
My commission expires

  
Notary Public

APPENDIX

EXHIBIT A: AFFIDAVIT IN SUPPORT  
OF  
MOTION FOR SUBPOENA DUCES TECUM

TMH

CCDD-1506.60

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMADAVID L. WATKINS  
PETITIONER

V.

STATE OF ALABAMA  
RESPONDENT

CASE NO: CC-1506

FIELD  
Melissa Rittenburg  
Circuit ClerkAFFIDAVIT IN SUPPORTSTATE OF ALABAMA  
COUNTY OF ELMORE

SS: Affidavit of David L. Watkins

Before me, the undersigned Notary Public in for said State and County, personally appeared before David L. Watkins whom is know to me as such, first being duly sworn and deposes and states the following:

I am the Petitioner named here and the above style cause and make this affidavit in truth concerning specific facts that transpired in my case. On Oct. 22, 1999, I was charged with Capital Murder in which I was arrested and placed in the custody of Montgomery County Jail. On September 15, 2000, the Grand Jury of Montgomery County later indicted me on the Charge of "Intentional Murder in violation of §13A-6-2 of the Code of Alabama, 1975. On September 28, 2000, the court appointed Winston Durant as my defense counsel, whom is known to me to be a registered member of the Alabama Bar Association. Mr. Durant interviewed me at the pre-trial stage, which he informed me that it would be a good idea to plead guilty to the charges against me. I informed Mr. Durant that the charges against me are not true and that I deserved a fair chance to tell my side of the story. I did not intentionally cause the death of John Ferrell,

and that his death was not caused by any act or acts on my part. His death was caused by a gunshot wound to the head, by a co-defendant, which was also charged with the same exact crime. I, while under the influence of alcohol, admitted that I did in fact assault the victim. But, it was the vicious act of my co-defendant that discharged the firearm that resulted in his death. I also informed my counsel, as well as the law-enforcers, that I did everything in my power to prevent the crime from happening. Neither, did I cause the crime to go further than the assault, because, the crime was taking on a new undertaking which was outside of my objective or purpose. These same facts or allegations were made in a taped statement given by me, (while under the influence of alcohol - which the officers of Montgomery Police Department never performed any tests to determine to what degree (or) level my intoxication was). Still, the State of Alabama believed that I helped commit the crime of murder. Mr. Durant without my permission (or) consent waived the preliminary hearing, and forfeited my right to a preliminary hearing.

Furthermore, Mr. Durant never retained a private investigator nor did he conduct any forensic analysis or tests. He relied solely on the State's evidence during trial in which he subpoenaed only one witness to verify that I was intoxicated at the time the arresting officer apprehended me. I also would like to point out the fact that Mr. Durant never conducted any pretrial investigations whatsoever. Because there is no proof in the Court records and exhibits admitted at the trial. Since Mr. Durant is a known, registered, member of the Alabama Bar Association - it should have occurred to him that these types of procedures should take place in order to increase the possibilities of the truth emerging during his client's trial.



On May 15, 2001 I had a jury trial in which I think it is safe to say that we had no type of defense whatsoever, due to the negligence of my counsel Winston Durant. He rarely, if ever, objected or subjected the state's case to any meaningful testing to even show a possibility of innocence in the charges against me. He, in addition, stood by while the state incriminated me, they even got away with quotes that were made in a transcript of the "so called" taped "confession", which the judge ruled to be dismissed from the trial itself.

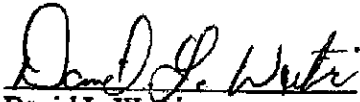
I sincerely believe that, had I received effective assistance of counsel, the outcome of the trial would have been different, and the jury could have either found me not guilty, or guilty upon a lesser included offense, had my said trial counsel requested a lesser included offense, the instructions on intoxication, the proper instructions of aiding & abetting, and insufficiency of the evidence. Rather than pleading "satisfied" when the court asked if any further instructions were needed.

In addition, Kelly Vickers was appointed to represent me on appeal in which he (or) she promised to visit with me to discuss issues concerning the appeal. I never got the chance to meet with her/him during the foregoing appeal. However, I was able to contact the appeal's counsel in writing, in which I constantly reminded counsel Vickers that I was being neglected as her/his client. My appeal's brief was filed by Counsel Vickers February 6, 2002. My counsel, Kelly Vickers, informed me that I would be notified of the outcome. On April 19, 2002, my appeal had been affirmed by memorandum and certificate of judgment was issued May 7, 2002, thereby concluding the appeal. Apparently, counsel had forgotten to inform me and was not aware of this fact. I later wrote the Criminal Court of Appeals and received the news from there, which after the

fact Kelly Vickers' response was that he/she thought they had informed me because their records indicate that fact. This is almost (2) years after my appeal had been affirmed, in fact, I did not receive a copy of the trial's transcript until April 2, 2004. I would also like to point out the fact that, I have no knowledge whether or not Counsel Vickers has heard the taped statement given by me to the law enforcement officers. If so, I still have not received it from the counsel.

Due to this counsel's negligence, I was not able to file a proper Rule 32 Post Conviction Relief in the subscribed manner in which the Rules of Court requires. In conclusion, I again, sincerely believe that had Kelly Vickers given me the effective assistance, which is required by law, the outcome of this appeal would have been different.

AFFIANT FURTHER SAYETH NAUGHT

  
David L. Watkins  
Affiant

Sworn to and subscribed before me this 5 day of oct, 2006.

  
My commission expires \_\_\_\_\_

  
Notary Public

IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT  
MONTGOMERY COUNTY, ALABAMA

DAVID L. WATKINS  
PETITIONER

V.

STATE OF ALABAMA  
RESPONDENT

MAN M. HOBBS, JR.  
JUDGE

CASE NO: CC 00-1506.60

MOTION TO SET ASIDE JUDGMENT

COMES NOW the Petitioner, David L. Watkins, pro-se in the above-styled cause, moves this Honorable Court to set aside the judgment entered on October 12, 2006, and allow him to re-enter his evidence to show just cause why he is entitled to another trial and/or sentencing reasons as follows:

1. On August 17, 2006 Petitioner's Rule 32 Petition was filed and a hearing was set in Montgomery County on October 12, 2006 to discuss the issues in his Rule 32 Petition.
2. On October 5, 2006 (7) seven days in advance, Petitioner filed a Motion for Subpoena Duces Tecum asking that the State of Alabama turn over a taped statement to be available for inspection at the hearing. Petitioner also submitted Traverse and Affidavits in support of Rule 32 and Subpoena Duces Tecum.
3. On October 8, 2006 while incarcerated at Montgomery County Detention Facility Petitioner wrote an inmate's request form asking the Clerk of Montgomery County if she had received these documents. The Clerk responded on October 11, 2006 by sending a copy of the case action summary, which did not indicate these documents. (See Petitioner's Exhibit A, B)

4. Petitioner later filed Motion to Alter, Amend or Vacate a Judgment on October 23, 2006 due to the fact that the taped statement was not available for inspection. In addition, on 23 October, Petitioner wrote a letter to the Clerk whom sent him another copy of his case action summary, which was dated October 26, 2006. in this newly discovered case action summary Petitioner learned that his documents had not only reached the clerk in time, but, they were supposedly filed on the 10<sup>th</sup> day of October, (2) two days before the hearing was held according to his case action summary. (See Petitioner's Exhibit C)

Wherefore, premises considered, Mr. Watkins prays that this Honorable Court shall grant his request to set aside the judgment entered on October 12, 2006 and either re-schedule another evidentiary hearing to permit Mr. Watkins the opportunity to show the evidence needed to prove his ineffective assistance claim or in the alternative take judicial notice of the taped statement (evidence), and make a decision on its merits. Furthermore, Petitioner asks this Court to send, by mail, a specific findings of fact after the decision on his evidentiary hearing. A failure to do so shall constitute the denial of due process and fundamental fairness.

Done this 6 day of November 2006.

Respectfully submitted,

David L. Watkins  
David L. Watkins  
Draper Correctional Center  
P.O. Box 1107  
Elmore, AL 36025-1107

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6 day of November 2006, I did serve a copy of the foregoing on the following, by placing the same in the United States Mail, first class, postage prepaid and addresses as follows:

The Honorable Judge Truman M. Hobbs Jr.  
Circuit Court of Montgomery County  
Montgomery County Courthouse  
251 S. Lawrence St.  
P.O. Box 1667  
Montgomery, AL 36102-1667

Offices of Ellen Brooks  
District Attorney  
Fifteenth Judicial Circuit of Alabama  
Montgomery County Courthouse  
P.O. Box 1667  
Montgomery, AL 36102-1667

David L. Watkins  
David L. Watkins  
Petitioner, pro-se

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
My commission expires

\_\_\_\_\_  
Notary Public

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

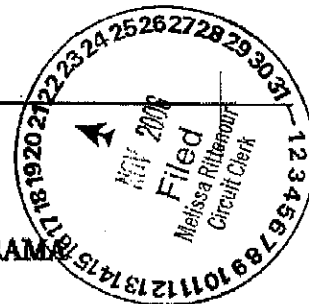
DAVID L. WATKINS  
PETITIONER

V.

STATE OF ALABAMA  
RESPONDENT

CASE NO: CC-1506-60  
TMH

**NOTICE OF APPEAL TO THE  
COURT OF CRIMINAL APPEALS OF ALABAMA**



Notice is hereby given that David L. Watkins, appeals to the above-named court from the judgment of denial and dismissal of Rule 32 Post Conviction Petition entered in this case on the 12<sup>th</sup> day of October 2006.

Done this the 14 day of November 2006.

Respectfully submitted,

David L. Watkins  
David L. Watkins  
Draper Correctional Center  
P.O. Box 1107  
Elmore, AL 36025-1107

Sworn and subscribed before me this 14 day of Nov., 2006.  
My Commission Expires March 25, 2008

My commission expires \_\_\_\_\_

James P. [Signature]  
Notary Public

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14 day of October 2006, I did serve a copy of the foregoing on the following, by placing the same in the United States Mail, first class, postage prepaid

David L. Watkins  
David L. Watkins  
Petitioner, pro-se

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
My commission expires

\_\_\_\_\_  
Notary Public

## APPENDIX 88

State of Alabama  
Unified Judicial System

Form ARAP- 26 (front) 8/91

COURT OF CRIMINAL APPEALS  
DOCKETING STATEMENT

Criminal Appeal Number

## A. GENERAL INFORMATION:

☒ CIRCUIT COURT ☐ DISTRICT COURT ☐ JUVENILE COURT OF MONTGOMERY COUNTY  
Appellant

V. ☒ STATE OF ALABAMA ☐ MUNICIPALITY OF

Case Number <u>CC 00-1506-60</u>	Date of Complaint or Indictment	Date of Judgment/Sentence/Order <u>Oct. 12, 2006</u>
Number of Days of Trial/Hearing Days	Date of Notice of Appeal Oral: <u>11-14-06</u> Written: <u>11-14-06</u>	
Indigent Status Requested: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Indigent Status Granted: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		

## B. REPRESENTATION:

Is Attorney Appointed or Retained? <input type="checkbox"/> Appointed <input type="checkbox"/> Retained.	If no attorney, will appellant represent self? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Appellant's Attorney (Appellant if pro se) (Attach additional pages if necessary) <u>David L. Wallows</u>	
Address <u>P.O. Box 1107</u>	City <u>Elmore</u>
State <u>Ala.</u>	Zip Code <u>36025</u>

## C. CODEFENDANTS: List each CODEFENDANT and the codefendant's case number.

Codefendant	Case Number
Codefendant	Case Number
Codefendant	Case Number

## D. TYPE OF APPEAL: Please check the applicable block.

- |  |  |  |   |
|--|--|--|---|
| 1 <input type="checkbox"/> State Conviction                  | 4 <input type="checkbox"/> Pretrial Order        | 7 <input type="checkbox"/> Juvenile Transfer Order | 10 <input type="checkbox"/> Other (Specify) |
| 2 <input checked="" type="checkbox"/> Post-Conviction Remedy | 5 <input type="checkbox"/> Contempt Adjudication | 8 <input type="checkbox"/> Juvenile Delinquency    |   |
| 3 <input type="checkbox"/> Probation Revocation              | 6 <input type="checkbox"/> Municipal Conviction  | 9 <input type="checkbox"/> Habeas Corpus Petition  |   |

## E. UNDERLYING CONVICTION/CHARGE: Regardless of the type of appeal checked in Section D, please check the box beside each offense category for which the appellant has been convicted or charged as it relates to this appeal. Also include the applicable section of the Code of Alabama for State convictions.

- |   |  |  |
|---|--|--|
| 1 <input type="checkbox"/> Capital Offense - §                  | 6 <input type="checkbox"/> Trafficking in Drugs - §            | 11 <input type="checkbox"/> Fraudulent Practices - §   |
| 2 <input checked="" type="checkbox"/> Homicide - §              | 7 <input type="checkbox"/> Theft - §                           | 12 <input type="checkbox"/> Offense Against Family - § |
| 3 <input type="checkbox"/> Assault - §                          | 8 <input type="checkbox"/> Damage or Intrusion to Property - § | 13 <input type="checkbox"/> Traffic - DUI - §          |
| 4 <input type="checkbox"/> Kidnapping/Unlawful Imprisonment - § | 9 <input type="checkbox"/> Escape - §                          | 14 <input type="checkbox"/> Traffic - Other - §        |
| 5 <input type="checkbox"/> Drug Possession - §                  | 10 <input type="checkbox"/> Weapons/Firearms - §               | 15 <input type="checkbox"/> Miscellaneous (Specify):   |

## F. DEATH PENALTY:

Does this appeal involve a case where the death penalty has been imposed? ☐ Yes ☒ No

## G. TRANSCRIPT:

- Will the record on appeal have a reporter's transcript? ☒ Yes ☐ No
- If the answer to question "1" is "Yes," state the date the Reporter's Transcript Order was filed. 11-14-06 (Date)
- If the answer to question "1" is "No":
  - Will a stipulation of facts be filed with the circuit clerk? ☐ Yes ☐ No
  - Will the parties stipulate that only questions of law are involved and will the trial court certify the questions? ☐ Yes ☐ No

NOTE: If the appeal is from the district or juvenile court and the answer to question "1" is "No," then a positive response is required for question 3(a) or 3(b).



Form ARAP- 26 (back) 8/91

## COURT OF CRIMINAL APPEALS DOCKETING STATEMENT

H. POST-JUDGMENT MOTIONS: List all post-judgment motions by date of filing, type, and date of disposition (whether by trial court order or by the provisions of Rules 20.3 and 24.4 (ARCrP)):

DATE OF FILING			TYPE OF POST-JUDGMENT MOTION	DATE OF DISPOSITION		
Month	Day	Year		Month	Day	Year
10	23	06	Motion to Alter, Amend or Vacate A Judgment			
11	7	06	Motion to Set Aside Judgment			

I. NATURE OF THE CASE: Without argument, briefly summarize the facts of the case.

The denial of Rule 32 petition

J. ISSUE(S) ON APPEAL: Briefly state the anticipated issues that will be presented on appeal. (Attach additional pages if necessary.)

Issue shall be presented upon the completion of the record.

K. SIGNATURE:

11-14-06  
Date

David L. Watkins pro-se  
Signature of Attorney/ Party Filing this Form



REV. 4/1/97

NOTICE OF APPEAL TO THE ALABAMA COURT OF CRIMINAL APPEALS  
BY THE TRIAL COURT CLERK

DAVID WATKINS

V.

STATE OF ALABAMA

APPELLANT'S NAME  
(as it appears on the indictment)

APPELLEE

☒ CIRCUIT ☐ DISTRICT ☐ JUVENILE COURT OF MONTGOMERY COUNTY  
 CIRCUIT/DISTRICT/JUVENILE JUDGE: TRUMAN HOBBS
DATE OF NOTICE OF APPEAL: 11/14/06

(NOTE: If the appellant is incarcerated and files notice of appeal, this date should be the date on the certificate of service, or if there was no certificate of service, use the postmark date on the envelope.)

## INDIGENCY STATUS:

 Granted Indigency Status at Trial Court  
 Appointed Trial Counsel Permitted to Withdraw on Appeal:  
 Indigent Status Revoked on Appeal:

☒ Yes ☐ No  
☐ Yes ☐ No  
☐ Yes ☒ No N/A

## DEATH PENALTY:

Does the appeal involve a case where the death penalty has been imposed?

☐ Yes ☒ No

## TYPE OF APPEAL: (Please check the appropriate block)

☐ State Conviction ☐ Pretrial Appeal by State ☐ Juvenile Transfer Order  
☒ Rule 32 Petition ☐ Contempt Adjudication ☐ Juvenile Delinquency  
☐ Probation Revocation ☐ Municipal Conviction ☐ Habeas Corpus Petition  
☐ Mandamus Petition ☐ Writ of Certiorari ☐ Other (Specify)

IF THIS APPEAL IS FROM AN ORDER DENYING A PETITION (I.E. RULE 32 PETITION, WRIT OF HABEAS CORPUS, ETC.) OR FROM ANY OTHER ORDER ISSUED BY THE TRIAL JUDGE, COMPLETE THE FOLLOWING:

TRIAL COURT CASE NO.: CC 00-1506.60DATE ORDER WAS ENTERED: 10/20/06PETITION: ☒ Dismissed ☐ Denied ☐ Granted

IF THIS IS AN APPEAL FROM A CONVICTION, COMPLETE THE FOLLOWING:

DATE OF CONVICTION: \_\_\_\_\_

DATE OF SENTENCE: \_\_\_\_\_

YOUTHFUL OFFENDER STATUS:

Requested: ☐ Yes ☐ NoGranted: ☐ Yes ☐ No

LIST EACH CONVICTION BELOW: (attach additional page if necessary)

 1. Trial Court Case No. \_\_\_\_\_ CONVICTION: \_\_\_\_\_  
 Sentence: \_\_\_\_\_  
 2. Trial Court Case No. \_\_\_\_\_ CONVICTION: \_\_\_\_\_  
 Sentence: \_\_\_\_\_  
 3. Trial Court Case No. \_\_\_\_\_ CONVICTION: \_\_\_\_\_  
 Sentence: \_\_\_\_\_

## POST-JUDGMENT MOTIONS FILED: (complete as appropriate)

	Date Filed	Date Denied	Continued by Agreement To (Date)
<input type="checkbox"/> Motion for New Trial			
<input type="checkbox"/> Motion for Judgment of Acquittal			
<input type="checkbox"/> Motion to Withdraw Guilty Plea			
<input type="checkbox"/> Motion in Arrest of Judgment			
<input type="checkbox"/> Other			

COURT REPORTER (S) \_\_\_\_\_  
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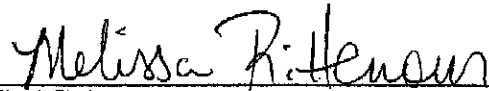
JUDY SHELTON

APPELLATE COUNSEL: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

N/A

APPELLANT: (IF PRO SE) \_\_\_\_\_  
ADDRESS: \_\_\_\_\_AIS# 219698 DAVID WATKINS  
P.O. BOX 1107APPELLEE (IF CITY APPEAL), ...  
ADDRESS: \_\_\_\_\_ELMORE, ALABAMA 36025-1107  
N/A
 I certify that the information provided above is accurate and  
 to the best of my knowledge and I have served a copy of this  
 Notice of Appeal on all parties to this action on  
 this 5th day of DECEMBER, 2006

Melissa R. Hester  
 CIRCUIT COURT CLERK

State of Alabama Unified Judicial System From ARAP - 14 Rev. 11/91	<b>CERTIFICATE OF COMPLETION AND          TRANSMITTAL OF RECORD ON          APPEAL BY TRIAL CLERK</b>	Appellate Case Number CR 06-408
TO: THE CLERK OF THE COURT OF CRIMINAL APPEALS OF ALABAMA APPELLANT DAVID WATKINS v. STATE OF ALABAMA		DATE OF NOTICE OF APPEAL: 11/14/06
<p>I certify that I have this date completed and transmitted herewith to the appellate court the record on appeal by assembling in ( a single volume of <u>445</u> pages) ( _____ volumes of 200 pages each and one volume of _____ pages) the clerk's record and the reporter's transcript and that one copy each of the record on appeal has been served on the defendant and the Attorney General of the State of Alabama for the preparation of brief.</p> <p>I certify that a copy of this certificate has this date been served on counsel for each party to the appeal.</p> <p>DATED this <u>26TH</u> day of <u>JANUARY</u>, <u>2007</u>.</p> <p style="text-align: right;">           Circuit Clerk       </p>		

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IN THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR MONTGOMERY COUNTY  
MONTGOMERY, ALABAMA

3

4

5

6

STATE OF ALABAMA, )

7

Plaintiff, )

8

VS. ) CRIMINAL ACTION

9

DAVID LEONARD WATKINS, ) NO. 00-1506

10

Defendant. )

11

12

TRANSCRIPT OF PROCEEDINGS

13

OCTOBER 12, 2006

14

MONTGOMERY COUNTY COURTHOUSE

15

COURTROOM 3-A

16

17

BEFORE: THE HON. TRUMAN M. HOBBS, JR.

18

CIRCUIT JUDGE

19

APPEARANCES

20

FOR THE STATE:

21

SCOTT GREEN, ASST DA

22

AZZIE TAYLOR, ASST DA

23

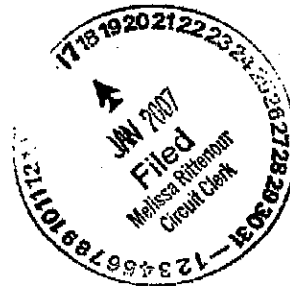
FOR THE DEFENDANT:

24

(No Appearance)

25

JUDY E. SHELTON  
OFFICIAL REPORTER



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3

THE COURT: All right. Mr.

4

Watkins, you filed a Rule 32

5

application. Do you want to offer any

6

testimony or call any witnesses? What do

7

you want to do?

8

THE DEFENDANT: Can I sit or do

9

I have to stand or --

10

THE COURT: You can sit.

11

That's fine.

12

THE DEFENDANT: Really, the

13

only thing I want to do is submit a brief

14

that actually show where -- I just want

15

to submit this brief in on my appeal when

16

I first came down. I would like to show

17

exactly the issue that I should have

18

brought up at trial that wasn't brought

19

up by my counsel, Winston Durant.

20

THE COURT: And that issue --

21

what you are saying there is that he

22

should have asked for a charge on

23

manslaughter?

24

THE DEFENDANT: Uh-huh

25

(indicating yes), as well as a

1 particularized intent instruction on  
2 aiding and abetting because when I was  
3 given the instructions on aiding and  
4 abetting it wasn't properly filed before  
5 the Court at the time that I went.

6 So what I did, I actually did  
7 research and actually found it under --  
8 give me a minute -- under Duncan versus  
9 State where it talks about particularized  
10 intent and the brief on page -- it will  
11 be on page nine of my brief, if you still  
12 have a copy of it that I submitted on my  
13 Rule 32.

14 THE COURT: I do.

15 THE DEFENDANT: Yeah. If you  
16 start from the beginning of it, it  
17 explains how any time you are dealing  
18 with particularized intent you have to  
19 bring in the issue of -- I'm sorry -- you  
20 have to break down the two issues. It  
21 talks about -- I'm sorry. Excuse me one  
22 minute.

23 That is what I'm saying. I'm  
24 sorry. The instruction that was given by  
25 the judge at the time that I went to

1 trial wasn't fully -- it didn't break  
2 down the particularized intent of aiding  
3 and abetting. Now they charged them on  
4 complicity that we went through but they  
5 never break down the whole case for it.

6 What I'm saying is if you read  
7 the instruction on particularized intent  
8 it should have been submitted at the  
9 time. By them not submitting these  
10 instructions that pretty much -- it  
11 lessens the state's burden of proof as  
12 far as finding me guilty or not.

13 THE COURT: Okay.

14 THE DEFENDANT: Sir?

15 THE COURT: I said okay. I  
16 have read what you have submitted. I  
17 guess the only question I have for you  
18 today is do you want to present any  
19 testimony or do you want to call any  
20 witnesses on your behalf?

21 THE DEFENDANT: I really don't  
22 have any witness. Everything that I have  
23 is here unless you want me to question  
24 the attorneys that was there. That's  
25 about it.



1 THE COURT: I think the state  
2 is probably going to call Mr. Durant to  
3 testify. I guess you can cross examine  
4 him.

5 THE DEFENDANT: Okay. Other  
6 than that, I don't have any witnesses I  
7 want to present at this time.

8 THE COURT: Are y'all ready to  
9 go forward with your case?

10 MR. GREEN: Yes, sir. Judge,  
11 we will call Mr. Durant in this case.

12 THE COURT: Okay.

13 WINSTON DURANT,  
14 having been first duly sworn, was  
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. GREEN:

18 Q. Can you tell us your name  
19 please?

20 A. Winston Durant.

21 Q. Mr. Durant, what is it that you  
22 do for a living?

23 A. The practice of law.

24 Q. How long have you been doing  
25 that type work?

1 A. Approximately thirty years.

2 Q. And over your thirty years have  
3 you had an occasion to -- you are a  
4 defense attorney; is that right?

5 A. Yes.

6 Q. Have you had an occasion to  
7 defend people who are charged with  
8 felonies including murder, capital  
9 murder?

10 A. Yes, I have.

11 Q. Specifically a guy by the name  
12 of David Watkins, were you his defense  
13 counsel?

14 A. Yes.

15 Q. How did that case progress?  
16 Did it go to trial?

17 A. Yes, it went to trial.

18 Q. And you were his attorney at  
19 trial; is that correct?

20 A. Yes, that's correct.

21 Q. He has alleged in a Rule 32  
22 petition that you were ineffective and  
23 provided him with ineffective  
24 assistance. Are you aware of those  
25 allegations?

1 A. Yes.

2 Q. Now, Mr. Durant, when preparing  
3 for this case did you read the  
4 discovery? Did you do anything that you  
5 normally would or would not do in a  
6 criminal trial?

7 A. Generally in a criminal trial,  
8 in particular in murders, I would read  
9 the discovery on numerous occasions in  
10 order to be well versed as far as the  
11 facts are concerned.

12 Q. Okay. Did you do that in this  
13 case?

14 A. Of course.

15 Q. Would you have considered  
16 yourself well versed in the facts of this  
17 particular case?

18 A. Of course.

19 Q. Now, specifically the  
20 allegations in this case are that after  
21 the state had made its case, after the  
22 defense had made its case, that you  
23 failed to offer the Court in writing a  
24 request for a lesser included charge of  
25 manslaughter. Are those charges

1 correct? Did you in fact not do that?

2 A. I did not ask the Court for a  
3 lesser included.

4 Q. Why was that?

5 A. Because the facts were of such  
6 that I felt that it wasn't warranted. I  
7 -- in my estimation, in my professional  
8 judgment I didn't think that there was a  
9 legal theory that --

10 THE DEFENDANT: Objection, Your  
11 Honor. We have proof from the evidence  
12 at the trial that intoxication was --  
13 everybody was intoxicated at the time of  
14 the crime. In dealing with the law --

15 THE COURT: You can point that  
16 out on cross examination where it says  
17 that.

18 THE DEFENDANT: Okay.

19 THE COURT: He is entitled to  
20 at least say it, and you can come back  
21 and challenge it when you question him.

22 Q. So, Mr. Durant, are you saying  
23 you didn't feel as though the facts of  
24 this case or the law warranted a lesser  
25 included charge --

1 A. That's correct.

2 Q. -- of manslaughter? Now the  
3 defendant brought up the issue of  
4 intoxication. Can you explain to us  
5 about that, why did you ask that that --  
6 why did you not ask that that be  
7 considered by the Court?

8 A. My recollection is that during  
9 the course of the trial, that was not an  
10 essential element of the defense. There  
11 was some -- I believe there might have  
12 been a statement that we were drinking  
13 but not to rise to the proportion where  
14 you would think it would impair a  
15 person's intent. With that missing, I  
16 didn't think that it was necessary for me  
17 to ask for a lesser included.

18 Q. Was there any evidence put  
19 forth at trial that the defendant had  
20 been drinking to such an extent that it  
21 would have impaired --

22 A. None that I can recall.

23 Q. What about during the time that  
24 he gave his statement, was there any  
25 evidence of that?

1 A. No.

2 MR. GREEN: Judge, that's all  
3 the questions we have for Mr. Durant.

4 THE COURT: Okay, Mr. Watkins.

5 THE DEFENDANT: Excuse me, Your  
6 Honor. I have one request because I saw  
7 this opinion on Friday. Just one thing.  
8 The taped statement that was made at  
9 trial, is it still here? I asked that it  
10 be subpoenaed here at the time before I  
11 came down. I tried to get in touch with  
12 the clerk in order for her to get it in  
13 here on the date so I could actually let  
14 you hear the taped statement that was  
15 made at the time that I came down for an  
16 interrogation. This is the same exact  
17 tape that we used at trial that we  
18 actually listened to that the state  
19 brought forward to actually -- which they  
20 said was --

21 THE COURT: Well, intoxication  
22 when you give your statement and  
23 intoxication during the offense are two  
24 different issues.

25 THE DEFENDANT: That is what I

1 was about to -- that was what I was going  
2 to point out. At the time that the crime  
3 happened, there is evidence in that tape  
4 that says that we were intoxicated at the  
5 time. Not only that, this issue was not  
6 even -- it wasn't an issue at trial  
7 because everybody had already admitted  
8 that we all was intoxicated at the time.  
9 So it wasn't an issue at the time.

10 If it had of been, I want to  
11 point out the fact that Mr. Durant was  
12 ineffective for not actually pointing  
13 this out at trial.

14 MS. TAYLOR: Your Honor, I do  
15 have a copy of the case file if he would  
16 like to look at his statement that he  
17 gave to the police. It's the transcribed  
18 statement of the tape that would have  
19 actually been entered into evidence.

20 THE COURT: Okay. Do you want  
21 to look at your statement?

22 THE DEFENDANT: I would like to  
23 look at it.

24 MS. TAYLOR: I would just  
25 request that you hand it back but you are

1 more than welcome to look at it.

2 THE DEFENDANT: Also, Your  
3 Honor, I actually have this down in my  
4 property. I wasn't able to bring it up.  
5 I was trying to get everything to bring  
6 it up so I could be prepared but I'm not  
7 prepared. So --

8 THE COURT: Well, take your  
9 time. We will make sure you get a fair  
10 hearing.

11 THE DEFENDANT: Okay. Right  
12 here on page four -- I will show it to  
13 you as well. Page four right here. When  
14 the officer asked -- okay, I think I want  
15 to be correct. This is the question that  
16 was asked by me and I answered it. It's  
17 the same statement that she's talking  
18 about.

19 It says, I think I want to be  
20 correct. After then I don't know if  
21 Latoya -- Latoya was already there and  
22 she came back but I remember seeing her  
23 before. I was there already or  
24 something. Anyway, but it gets on down  
25 here. When it gets on down to the



1 statement, it says specifically right  
2 here that we was drinking. This is the  
3 statement that I made.

4 So there was no dispute whether  
5 we were drinking at the time of the  
6 crime, which is now. It said, he had  
7 beer when he came in. In the statement I  
8 was letting the officer know. She was  
9 asking me was, did y'all give the victim  
10 alcohol or did he bring his own. I was  
11 letting her know that he already had  
12 his. He was drinking when we came.

13 So the evidence as far as being  
14 intoxicated at the time of the crime or  
15 at the time of the event, it's right here  
16 in the statement.

17 THE COURT: You are going to  
18 have to have something more than that.  
19 That is a long way from --

20 THE DEFENDANT: This is what  
21 the statement was relying on as being a  
22 confession. So if it was a confession,  
23 it's already in evidence. This is the  
24 only evidence that we had at the time.  
25 Any witnesses that could verify this was

1 true would be a codefendant which I  
2 wasn't able to subpoena them here today.

3 THE COURT: Okay. Anything  
4 else you want to point out?

5 THE DEFENDANT: I also have a  
6 brief in the trial transcript in which  
7 Mr. Durant also admits himself that --

8 THE COURT: The problem with  
9 the transcript that I have seen -- I'm  
10 not going to say I have read every page  
11 but what you cite to in your brief is the  
12 arguments of the attorneys, and that is  
13 not evidence. So if there is evidence in  
14 the record of intoxication, I would  
15 really appreciate it if you would show me  
16 where a witness testified that -- you  
17 know, would leave me to believe that you  
18 were intoxicated at the time this poor  
19 guy was brutally murdered.

20 THE DEFENDANT: That is the  
21 thing I was trying to point out, Your  
22 Honor. A lot of these issues wasn't  
23 reserved for appeal, and I couldn't  
24 reserve them because I didn't have an  
25 effective attorney to reserve these

1 issues for me. This is the reason why  
2 I'm trying to raise them as much as I can  
3 now. I really don't have the knowledge  
4 that I need to actually effectively --

5 THE COURT: Well, you have had  
6 the transcript with you in prison. You  
7 have reviewed it. You obviously have  
8 because you cited it in your brief and  
9 make reference to it.

10 Can you point to me any  
11 witness, either by page or just the name  
12 of a witness, who said that y'all had --  
13 how much you had had to drink or that you  
14 were drunk or that you --

15 THE DEFENDANT: That's another  
16 thing. At the time that he actually took  
17 a statement, they never took a  
18 Breathalyzer test or anything.

19 THE COURT: Mr. Watkins, they  
20 don't have to give you a Breathalyzer  
21 test. Come on. Show me where there is  
22 testimony that I can look at that would  
23 lead me to believe that you were  
24 intoxicated beyond the fact that you were  
25 drinking.

16

1 THE DEFENDANT: There is  
2 nothing else in here.

3 THE COURT: Okay. Appreciate  
4 your candor.

5 THE DEFENDANT: This's it for  
6 the intoxication.

7 THE COURT: Mr. Durant, are you  
8 aware of any testimony from any witness  
9 either in Court or out of Court that Mr.  
10 Watkins was intoxicated or was so  
11 impaired that would -- that you could  
12 argue to the Court that he lacked the  
13 ability to form an intent to kill?

14 MR. DURANT: I am not aware of  
15 that, Judge. I believe if I were so  
16 aware, I would have raised it.

17 THE DEFENDANT: Objection, Your  
18 Honor. If I may, can I ask for a  
19 continuance in order to subpoena the  
20 codefendants that were on the case.  
21 They're the only ones I know of right now  
22 that could verify that we were.

23 THE COURT: That really  
24 wouldn't help you. I'm pretty sure there  
25 is a case that says the testimony of a

1 codefendant in Rule 32s is not very  
2 helpful.

3 THE DEFENDANT: That is the  
4 only proof I have, Your Honor.

5 THE COURT: Okay. Anything  
6 from the state?

7 MR. GREEN: We would just say  
8 that even in the petitioner's own brief  
9 he mentioned that he was likely  
10 intoxicated at the alleged time of the  
11 murder. Even he himself did not say that  
12 he was intoxicated at the time. And in  
13 regards to the allegations of ineffective  
14 assistance of counsel, as the Court is  
15 aware in Strickland v. Washington he has  
16 to prove the two-prong test that the  
17 defense counsel was so ineffective as to  
18 essentially provide no counsel and that  
19 the means of his ineffectiveness were so  
20 egregious that had he had an effective  
21 counsel, the outcome would have been  
22 different. We feel as though the  
23 defendant has failed to meet either prong  
24 of the Strickland rule.

25 THE DEFENDANT: Objection, Your

1 Honor. There has only been one issue  
2 right up to now as far as the  
3 intoxication. There is also another  
4 issue dealing with the aiding and  
5 abetting which I would point out.

6 THE COURT: Is there anything  
7 else you want to do or say or ask of the  
8 witness about the aiding and abetting  
9 issue?

10 THE DEFENDANT: Yeah. I have a  
11 few questions as far as aiding and  
12 abetting.

13 THE COURT: All right.

14 THE DEFENDANT: Do you want me  
15 to stand or sit?

16 THE DEFENDANT: You can sit.

17 BY THE DEFENDANT:

18 Q. As far as the aiding and  
19 abetting. From my understanding of what  
20 you just told me, you said you were  
21 defense counsel for about thirty years as  
22 a defense counsel. Right?

23 A. Yes.

24 Q. Are you familiar with the  
25 complicity statute of aiding and

1 abetting?

2 A. Yes.

3 Q. Are you familiar with the whole  
4 breakdown as far as the particularized  
5 intent that it talks about in Rellick  
6 (sic) and so on in --

7 A. Yes.

8 Q. You are? So when you -- I  
9 don't think you actually need  
10 instruction. These were instructions  
11 given by the state that they gave. I  
12 don't think you actually went through and  
13 -- did you actually ask them whether  
14 this the fully -- the full record of the  
15 instructions on this?

16 I think I'm asking this  
17 question wrong but in aiding and  
18 abetting, it talks about a common -- they  
19 are talking about a common purpose, in  
20 other words. You have to have a meeting  
21 of the minds. You are familiar with  
22 that?

23 A. Yes.

24 Q. Are you familiar that the Court  
25 did not instruct the jury on the whole --

1 the law as it applies with this. Are you  
2 familiar with that?

3 A. I believe the Court instructed  
4 the jury on the standard definition of  
5 intentional murder which encompassed  
6 aiding and abetting and complicity. You  
7 know, from the facts of the case there  
8 was more than enough evidence to show  
9 that there was aiding and abetting and  
10 complicity.

11 THE DEFENDANT: Okay. As far  
12 as particularized intent, I found this  
13 case in Duncan versus State. If you read  
14 the rule on page nine in Duncan versus  
15 State it talks about how the trial court  
16 incorrectly -- in this case correctly  
17 instructed the jury on the particularized  
18 intent issue. Furthermore, the trial  
19 court correctly instructed the jury with  
20 regard to accomplice liability.

21 The relevant part -- and this  
22 is what they read. The mere presence of  
23 a defendant who intends to assist with  
24 the criminal act should it become  
25 necessary is aiding and abetting if and



1       only if the one who commits the act knows  
2       that the defendant is present and  
3       attempts to assist in that offense.

4               All right. When they did this,  
5       there was no evidence at trial to show  
6       that I actually knew exactly what these  
7       codefendants of mine was planning. The  
8       only evidence I have of that would be  
9       that taped statement once again. The  
10      state actually goes off this taped  
11      statement that we actually point out in  
12      which there is nowhere in the record  
13      where I actually admit to helping anybody  
14      commit any crime. Not only that -- in  
15      the statement I do admit that I did  
16      commit some acts but I do not admit in  
17      that statement saying that I was helped  
18      by anybody in this statement.

19             Now, my question is, how did  
20      the state actually come about getting an  
21      aiding and abetting out of something  
22      which -- I mean, if you used the tape to  
23      say confession but there is nowhere in  
24      the record where I actually talked about  
25      confessing to helping anybody. That was

1 my defense at trial which I tried to  
2 point out to Mr. Durant.

3 I am asking him now in front of  
4 everybody, I am asking if you are  
5 familiar with the aiding and abetting  
6 statute why didn't you use this as a  
7 defense to actually try to get the point  
8 across? You know what I mean?

9 Basically what I'm saying, if  
10 you knew about the aiding and abetting  
11 and you did read -- you did hear the  
12 taped statement, right?

13 A. Yes.

14 Q. You heard the part where it  
15 actually says I kicked and urinated on  
16 the victim and so on and so forth?

17 A. Yes.

18 Q. But is there anywhere in the  
19 record to your recollection that I  
20 actually state that I was there to help  
21 any of my codefendants or if my  
22 codefendants were there to help me? Is  
23 there anywhere in the record that it says  
24 this that you know of to the best of your  
25 knowledge?

1           A. I can't recall that but I think  
2           your actions -- you know, that you could  
3           draw conclusions from your actions. And  
4           if you concede that you urinated and you  
5           kicked the defendant, I think that speaks  
6           for itself.

7           Q. That is what brings me back to  
8           different -- where it talks about -- in  
9           the law where it talks about different  
10          intents. Have you ever read the law on  
11          that? Let me see if I can find it.

12          THE COURT: Mr. Watkins, let me  
13          just say this. Your argument in your  
14          brief is that they didn't prove -- they  
15          omitted any element of intent.

16          THE DEFENDANT: No. What I'm  
17          saying --

18          THE COURT: I am looking at  
19          what the judge charged the jury. Under  
20          the law, a person acts -- a person is  
21          legally accountable for the behavior of  
22          another person constituting a crime if  
23          with the intent to promote or assist in  
24          the commission of that crime he aids or  
25          abets. So the Court did in fact tell the

1 jury that you had to have the intent to  
2 aid or abet. I don't know what else you  
3 wanted the Court to say.

4 THE DEFENDANT: Yeah. I was  
5 trying to get him to point out the fact  
6 that, all right, even though it's aiding  
7 and abetting -- my aiding and abetting  
8 that they talked about didn't cause the  
9 death of the victim. I wasn't working in  
10 behalf of my codefendants.

11 Now true enough, I did assault  
12 the victim but he wasn't killed by any  
13 acts on my part. He was shot. He was  
14 killed with a gunshot wound to the head.  
15 That's what killed him. Now if that  
16 would kill him, there is no way you can  
17 tie me in with the rest of it because  
18 there is nowhere in the record where  
19 anybody admits that I actually used a  
20 weapon. Neither did I.

21 I keep pointing at the fact  
22 that everybody said this is a  
23 confession. So if this is a confession,  
24 shouldn't I have to say this in the  
25 record?

25

1 THE COURT: No.

2 THE DEFENDANT: I shouldn't?

3 THE COURT: No. The jury can  
4 infer your intent from your actions.

5 THE DEFENDANT: But the thing  
6 is, they wasn't properly instructed on  
7 the law that actually come through me so  
8 it pretty much limits my defense.

9 THE COURT: No. I think she  
10 gave the same instruction I have been  
11 giving ever since I got here on aiding  
12 and abetting. If it is wrong, somebody  
13 needs to go ahead and tell me. But she  
14 charged the jury that you had to have the  
15 intent to assist in the murder of the  
16 victim. I don't know what else she was  
17 supposed to tell the jury.

18 THE DEFENDANT: All right. I'm  
19 still pointing out Duncan versus State  
20 where it says --

21 THE COURT: Let me just read  
22 your own brief to you. This is what you  
23 are complaining about. Therefore, in the  
24 absence of the element of aiding and  
25 abetting your lawyer hurt your defense.

1       You say that element that he did not  
2       intend to promote or assist the principal  
3       by aiding and abetting him caused the  
4       death of the victim. That is exactly  
5       what the judge charged the jury, that you  
6       had to assist -- you had to have the  
7       intent to aid or abet in the death of the  
8       victim. That is exactly what she told  
9       the jury. I don't see what else you want  
10      her to say.

11               THE DEFENDANT: But I didn't  
12      have a proper -- I feel if I had a proper  
13      defense there as far as that statement.

14               THE COURT: Mr. Watkins, look,  
15      you acknowledge that you assaulted the  
16      victim. You acknowledge that you  
17      urinated on him. And while you didn't  
18      fire the bullets, that doesn't make you  
19      in the eyes of the law any less culpable  
20      or any less responsible. That is just  
21      the way the law is. I just haven't heard  
22      anything here today that leads me to  
23      believe that you were denied any adequate  
24      assistance of counsel, due process, or  
25      just plain old justice. You got your day

1 in Court. The jury found against you. I  
2 don't see how else they could have found  
3 under the evidence in this case.

4 You were there. You take the  
5 guy out. You kick him. You urinate on  
6 him. I think there is also some  
7 testimony about you said do it, do it to  
8 Latoya who is apparently the one who may  
9 have actually pulled the trigger.

10 THE DEFENDANT: That's another  
11 point I would like to point out. In that  
12 statement where it talks about do it,  
13 that's not even -- that -- that --

14 THE COURT: You're capable --

15 THE DEFENDANT: I think I was  
16 asking a question in that one.

17 THE COURT: Maybe. Maybe you  
18 were. But that's a jury question, and  
19 the jury believed against you. That is  
20 all I can -- I'm not going to come back  
21 here and second-guess the jury. But Mr.  
22 Watkins, for God's sake, there is more  
23 than proof beyond a reasonable doubt in  
24 this case of your culpability. I'm going  
25 to deny your Rule 32 petition. I'm going

28

1 to get out an order.

2 THE DEFENDANT: Okay. One more  
3 question. Did you get a chance to look  
4 at the indictment?

5 THE COURT: No. The Supreme  
6 Court has said -- they claim it's  
7 time-barred. You are too late to raise a  
8 problem with the indictment. It does not  
9 affect the jurisdiction of this Court.  
10 So I have not read the indictment.

11 END OF PROCEEDINGS

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CERTIFICATE

STATE OF ALABAMA       )  
COUNTY OF MONTGOMERY   )

I, JUDY E. SHELTON, OFFICIAL  
COURT REPORTER IN AND FOR THE FIFTEENTH  
JUDICIAL CIRCUIT, MONTGOMERY COUNTY,  
ALABAMA, DO HEREBY CERTIFY THAT I  
REPORTED IN MACHINE SHORTHAND THE  
FOREGOING HEARING AS STATED IN THE  
CAPTION HEREOF; THAT MY SHORTHAND NOTES  
WERE LATER TRANSCRIBED BY ME OR UNDER MY  
SUPERVISION, AND THAT THE FOREGOING PAGES  
REPRESENT A FULL, TRUE AND CORRECT  
TRANSCRIPT OF SAID PROCEEDINGS; THAT I AM  
NEITHER KIN NOR OF COUNSEL TO ANY PARTIES  
IN THIS PROCEEDING NOR IN ANY WAY  
INTERESTED IN THE RESULTS THEREOF.

DATED THIS THE \_\_\_\_ DAY OF \_\_\_\_\_,  
2006.

---

JUDY E. SHELTON  
OFFICIAL COURT REPORTER

Appeals No. CR-06-0408

IN THE ALABAMA COURT OF CRIMINAL APPEALS

David L. Watkins, Appellant

v.

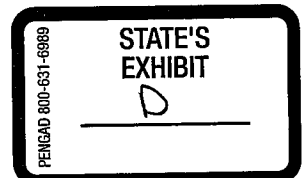
STATE OF ALABAMA, Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF

MONTGOMERY COUNTY, ALABAMA

(CASE NO. CC 00-1506.60)

BRIEF OF APPELLANT DAVID L. WATKINS



David L. Watkins  
A.I.S.# 219698  
Draper Correctional Center  
Post Office Box 1107  
Elmore, AL 36025

STATEMENT REGARDING ORAL ARGUMENT

The Appellant - David L. Watkins, does not request oral argument, because just and correct and this Court's decisional process would not be significantly aided by oral argument. Ala.R.App.P. Rule 34(a)(3).

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STATEMENT OF CASE

On September 15, 2000, the Appellant (Hereinafter "Mr. Watkins") was indicted for one felony count of intentional murder of Christopher Ferrell in violation of §13A-6-2(a)(1) Code of Alabama (1975 as amended) (C. 367-369)

On May 15, 2001, Watkins received a jury trial. On May 16, 2001 the jury returned a verdict of guilty of intentional murder (C.319-320).

On October 22, 2001, Watkins appeared for sentencing along with the other two co-defendants. The Court sentenced all (3) three defendants to life in the Department of Corrections (C.331).

On May 7, 2002, Alabama Court of Criminal Appeals issued a Certificate of Judgment that certified its affirmance.

On April 2, 2004, Watkins' Appellate Counsel, Kelly Vickers, forwarded a via letter stating that he was enclosing a copy of the Appellate Court decision, enclosing a copy of Watkins transcript, and Watkins still have one recourse left, a Rule 32 Petition, but you need to file it immediately - before April 19 if possible (C.379-381).

On August 17, 2006, Mr. Watkins filed an objection to the State's failure to submit a timely motion to dismiss his Rule 32 Petition (C.384).

On September 28, 2006, Mr. Watkins received a written order from the trial court finding that this matter was set for a hearing on October 12, 2006 (C.394).

On October 5, 2006, Mr. Watkins mailed a "Motion for Subpoena Duce Tecum" (attached with an affidavit in support) that was filed by the Circuit Clerk of Montgomery County on October 10, 2006 (C.1, 406-409)

On October 12, 2006, the evidentiary hearing pertaining to this matter was conducted (See Transcript of hearing, pp.1-29). The trial court entered an order that denied Mr. Watkins said Rule 32 Petition (C.423-24).

On October 23, 2006, Mr. Watkins submitted a motion to alter, amend or vacate judgment, due to the tape statement was not available for inspection and was the sole evidence in which to properly argue his claim of ineffective assistance of counsel (C.425-26). The trial court denied said motion.

On November 7, 2006, Mr. Watkins submitted a "Motion to Set Aside Judgment" where he requested the trial court to re-schedule another evidentiary hearing permitting him the opportunity to show the evidence needed to prove his ineffective assistance claim or in the alternative take judicial notice of the taped statement (C.436-38). The trial court denied said motion.



On November 11, 2006, Mr. Watkins filed a timely notice of appeal with the Circuit Court of Montgomery County (C.439).

STATE OF THE ISSUES

I. Whether Appellate Counsel was ineffective for his failure to raise in a motion for new trial. The issue of the denial of the effective assistance of trial counsel, due to counsel's failure to submit a written request that the trial court instruct the jury on a lesser included offense of manslaughter regarding intoxication?

II. Whether the trial court erred by its failure to afford Watkins his right to compulsory process to compel the production of evidence at the evidentiary hearing?

### Statement of Facts

This is an appeal of a Rule 32 Post-Conviction petition where your Appellant was convicted for murder in violation of §13-6-2(a)(1) Code of Alabama, 1975, and was sentenced (hereinafter "Mr. Watkins") to serve life imprisonment. Watkins raised several pertinent constitutional issues that he alleged were deprived from him during the course of his criminal proceeding, and the issues in nature are both substantive and procedural due process pursuant the Fourteenth Amendment to the United states Constitution.

On or about October 19, 1999, the Appellant, David Watkins was playing cards and listening to music with co-defendants Robert Watkins, Latoya Davis and, the victim, John Ferrell. They were in the home of Robert Watkins on Keystone Street in Montgomery, Alabama. The audio "taped confession" indicates that all parties were drinking around the time the alleged crime transpired. In which, John Ferrell was beaten and killed from a gunshot wound to the head<sup>1</sup> (C.130, 138, 139). The body of the victim was later found in a ditch at the end of the street. The chief evidence, which convicted Watkins, was his taped statement.

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<sup>1</sup> The taped confession was admitted into evidence as exhibit 44, with the letter 'A' marked on it (C.130, 135, 139).

Watkins respectfully requests that this Court take judicial notice of its own records in Watkins v. State of Alabama, CR-01-0232<sup>2</sup>.

Watkins filed his Rule 32 petition with the Circuit Court of Montgomery County on August 22, 2006. Watkins raised (3) three claims and one of those claims was ineffective assistance of Appellate Counsel due to Counsel's failure to raise a non-frivolous claim in a motion for new trial (C.23-25). Watkins demonstrated a "failure to entertain this petition will result in a miscarriage of justice" (C.414-422).

The State of Alabama filed a response to the allegations containing to the said Rule 32 Petition; requesting the trial court to dismiss the Rule 32 petition. However, the state did not plead any ground of preclusion in this instant case (C.390).

On October 12, 2006, a hearing was conducted in this case. During the hearing, Watkins' trial counsel offered testimony that he had been practicing law for approximately (30) thirty years (R.5-6). Watkins' trial counsel, Mr. Durant, stated that he did not ask the court for a less included offense of manslaughter because the facts were of such that he felt they were not warranted, due to his professional judgment he didn't

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<sup>2</sup> This Court has the authority to take judicial notice of its own records in another proceeding if pleading in instant case refers to the other proceeding is of record in trial court whose decree or judgment is basis of the instant appeal, and prior proceeding is of record in the appellate court in another appeal or is set out in the instant record. Harmon v. State, 439 so.2d 829 (Ala.Cr.App.1983)

think that there was a legal theory for such an instruction (R.7-8)

Watkins' trial counsel, Mr. Durant, explained why he did not request for an instruction on the lesser included offense of manslaughter to be considered by the court, his reason was that there might have been a statement that Watkins and his co-defendants were drinking but not to rise to the proportion that you would think it would impair a person's intent. With that missing, Mr. Durant stated that he did not think it was necessary to request for an instruction on the lesser included (TRANSCRIPT OF HEARING, pp.9).

Also, during the hearing, Mr. Watkins made a request by asking the trial court was the "taped statement" that was entered into evidence at his trial available, so that he could point out, at the time the crime occurred there was evidence in that "tape statement" that indicates that he was intoxicated<sup>3</sup>. The State of Alabama contended that (they had the transcribed statement of the tape that would have actually been entered into evidence TRANSCRIPT OF HEARING, pp.10 C.77-79). The trial court stated that "you are going to have to have more than that. That is a long way from - -" (See TRANSCRIPT OF HEARING pp.13)

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<sup>3</sup> The transcribed statement of the tape the state produced at the hearing was not legal evidence because it was not admitted into evidence at trial (C.77-79).

October 20, 2006, the trial court issued a written order finding that there was no basis for Watkins' Trial Counsel requesting the lesser-included charge; in addition, Watkins fail to satisfy the requirements of Strickland.

October 23, 2006, Mr. Watkins submitted a motion to alter, amend or vacate judgment; due to the tape statement was not available for inspection and was the sole evidence in which to properly argue his claim of ineffective assistance of counsel (C.425-26). The trial court denied said motion. On November 7, 2006, Mr. Watkins submitted a "Motion to Set Aside Judgment" where he requested the trial court to re-schedule another evidentiary hearing permitting him the opportunity to show the evidence needed to prove his ineffective assistance claim or in the alternative take judicial notice of the taped statement (C.436-38). The trial court denied said motion and this appeal follows:

STANDARDS OF REVIEW

A petitioner in a Rule 32 proceeding has the burden of pleading and proving his allegation. Eddins v. State, 581 So.2s 274 (Ala.Crim.App. 1991); Ala.R.Crim.P. Rule 32.3. The Trial Court's judgment is reviewed only for an abuse of discretion, and will be affirmed if correct for any reason. Grady v. State, 831 So.2d 646, 648 (Ala.Crim.App.2001), citing Reed v. State, 748 So.2d 231, 233 (Ala.Crim.App.1999). The Court's review in a Rule 32 proceeding is de novo when the facts or undisputed and an appellate court is presented with pure questions of law. State v. Hill, 690 So.2d 1201, 1203 (Ala.1996) Ex Parte White, 792 So.2d 1097, 1098 (Ala.2001).

Summary of the Argument

The Trial Court erred in summarily denying, Watkins' claims for post-conviction.

Watkins claims that the sixth Amendment of the United States Constitution and Article I, §6 of the Alabama Constitution of 1901, affords him the right to effective assistance of trial counsel in all stages and entitled to the effective assistance of counsel on a direct appeal as of right. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 33 L.Ed.2d 821 (1985).

Watkins claims that his Appellate Counsel was ineffective for his failure to raise a non-frivolous issue in a motion for new trial that Watkins' Trial Counsel was ineffective by not requesting a jury charge on the lesser-included offense of manslaughter regarding intoxication. Watkins contends that due to counsel failure his due process rights were violated because he is entitled to have any charges given which is supported by any evidence, however weak, insufficient, or doubtful incredibility.

Watkins claims that his right to compulsory process to compel the production of evidence was violated - due to trial court's failure to compel the State of Alabama to produce the tape audio statement that was entered into evidence at trial in



tape audio statement that was entered into evidence at trial in the present case, thereby, Watkins contends that he could not successfully meet the Strickland requirements.

For each of these reasons, the Trial Court denial of Watkins claims is due to be remanded and reversed.

I. WHETHER APPELLATE COUNSEL WAS INEFFECTIVE FOR HIS FAILURE TO RAISE IN A MOTION FOR NEW TRIAL THE ISSUE OF THE DENIAL OF THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL, DUE TO COUNSEL'S FAILURE TO SUBMIT A WRITTEN REQUEST THAT THE TRIALCOURT INSTRUCT THE JURY ON AN LESSER-INCLUDED OFFENSE OF MANSLAUGHTER REGARDING INTOXICATION?

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Watkins answers yes. Watkins presented this claim in his petition (C.23-33). Watkins claimed that the Constitution of the United States and ART. I, §6 of the Alabama Constitution requires a new trial, or other relief as law requires.

Because Watkins was deprived of his liberty due to the denial of effective Appellate Counsel, due to his failure to raise non-frivolous issues in a motion for new trial as follows: The denial of the effective assistance of trial counsel, due to counsel's failure to submit a written request that the trial court instruct the jury on an lesser included offense of manslaughter regarding intoxication.

The basics for this claim is that the trial court failed to charge the jury regarding intoxication in its instructions to the jury, which relieved the state of its burden of proof, thereby, the jurors could not intelligently comply with their duties as jurors.

A hearing was conducted in this present case. At the hearing, Watkins' trial counsel offered testimony that he had been practicing law for approximately (30) thirty years (TRANSCRIPT OF HEARING pp.5-6). Watkins' trial counsel, Mr. Durant, stated that he did not ask the court for a lesser-included offense of manslaughter because the facts were of such that he felt they weren't warranted, due to his professional judgment he didn't think that there was a legal theory for such an instruction (TRANSCRIPT OF HEARING pp.7-8). Watkins' trial counsel, Mr. Durant, explained why he did not request for an instruction on the lesser included offense of manslaughter to be considered by the court, his reason was that there might have been a statement that Watkins and his co-defendants were drinking but not to rise to the proportion that you would think it would impair a person's intent. With that missing, Mr. Durant stated that he did not think it was necessary to request for an instruction on the lesser included (TRANSCRIPT OF HEARING pp.9).

On October 18, 2006, the trial court issued a written order finding that Watkins acknowledged that there was no actual evidence at trial concerning his intoxication. Thus, there was no basis for requesting the lesser-included charge. In addition, Watkins failed to satisfy the requirement of Strickland.

Watkins contends that the Trial Court erred when it denied his claim that his trial counsel rendered ineffective assistance of counsel for failure to ask for a jury charge on manslaughter because of Watkins' intoxication. Watkins asserts that he did not acknowledge the fact that there was no actual evidence a trial concerning his intoxication, as the trial court erroneously stated in its order (C.423-24).

In order to prevail on a claim of ineffective assistance of counsel, a defendant must show (1) that his counsel's performance was deficient, and (2) that he was prejudiced by the deficient performance. Strickland v. Washington, 466 U.S. 668, 669, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). Watkins respectfully requests this Court to address this issue in light of the standards in issue (1) one of this brief.

In addition to the testimonies from the Rule 32 proceedings, in this present case, Watkins was charged by an indictment in the Circuit Court of Montgomery County with intentionally causing the death of John Ferrell by shooting with a gun, in violation of section 13A-6-2 of the Code of Alabama (C.367-369). The State's theory at trial was that Watkins was an aider and abetter in the death of "Mr. Ferrell". But the evidence tended to show the following:

On or about October 19, 1999, the Appellant, David Watkins was playing cards and listening to music with co-defendants

Robert Watkins, Latoya Davis, and the victim John Ferrell. They were in the home of Robert Watkins on Keystone Street in Montgomery, Alabama. The audio "taped confession" indicates that all parties were drinking around the time the alleged crime transpired. In which, John Ferrell was beaten and later killed from a gunshot wound to the head<sup>4</sup>. The body of the victim was later found in a ditch at the end of the street. The chief evidence in this case was a taped statement made by Watkins to the arresting officers.

Watkins argues that due to the above evidence in this present case, his trial attorney, indeed, should have submitted a written request that the trial court instruct the jury on the lesser-included offense of manslaughter regarding intoxication.

Because, in federal courts, the defendant is entitled to an instruction on a lesser included offense and acquit him of the greater. Beck v. Alabama, 447, 625, 65 L.E.2d 392, 100 S.Ct. 2382. Moreover, when the crime charged involves specific intent, such as murder, and there is evidence of intoxication the judge should instruct the jury on the lesser-included offense of manslaughter. Gray v. State, 482 So.2d 1318, 1319 [Ala.Crim.App. 1985] (See also McNeil, 496 So.2d at 109, Moore v. State, 647 So.2d 43 [Ala.Cr.App.1994])

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<sup>4</sup> The taped confession was admitted into evidence as exhibit 44 with the letter 'A' marked on it (C.130, 138, 139).

"Whether the level of intoxication is sufficient to negate an essential element the crime, such as intent is a question of fact to be resolved by the jury. Adams v. State, 484 So.2d 460 (Ala.App.1985). In fact, the decisions of the Supreme Court of Alabama are to the effect that every accused is entitled to have charges given, which would not be misleading, which correctly state the law of his case, and which are supported by [any] evidence, however weak, insufficient, or doubtful incredibility. Burns v. State, 229 Ala 68, 155 So. 561 (1934), (Quoting) Ex Parte Long, 600 So.2d 982 (Ala. 1992)

#### DEFICIENT PERFORMANCE

In order to meet the first prong of the Strickland test, "the defendant must show that counsel's representation fell below an objective standard of reasonableness." 466 U.S. at 688, 104 S.Ct. at 2064.

From the Rule 32 hearing Watkins' attorney offered into evidence that "he did not ask the Court for a lesser included offense of manslaughter because the facts were of such that he felt they weren't warranted, due to his professional judgment he didn't think that there was a legal theory for such an instruction (R.7-8).

However, the evidence solicited via 'taped confession' indicated that all parties had been drinking during the course of the alleged crime. Therefore, under the circumstance a

competent trial counsel would have requested the trial court to charge the jury on the lesser included offense of manslaughter regarding intoxication, because, in determining that Watkins was not so intoxicated during the crime was exclusively province of the jury." Owen v. State, 611 So.2d at 1128 (emphasis added)

Therefore, Watkins' trial counsel representation fell below the objective standard of reasonableness.

#### PREJUDICIAL EFFECT OF DEFICIENT PERFORMANCE

The evidence solicited via taped confession indicated that all parties were drinking around the time the alleged crime transpired (C.130,138,139), therefore, Watkins contends that by his trial attorney's failure to ask the trial court to charge the jury on a lesser included offense of manslaughter regarding intoxication, hurt his defense - that he was so intoxicated that he did not know what he was doing - and it allowed the jury to convict without considering the fact whether or not Watkins was so intoxicated that he did not know what he was doing. This omission was prejudicial to Watkins and he concludes that the outcome of this case would have been different had the jury been afforded the opportunity to reflect upon, discern, and distinguish upon the facts presented by the state; the "taped confession" (facts) presented by the state; whether or not they believe beyond a reasonable doubt that Watkins was intoxicated to the point of mania.

BASED UPON THE FOREGOING, Watkins' appellate counsel was ineffective for his failure to raise this claim of ineffective assistance of trial counsel in a 'motion for new trial'. Additionally, the failure of counsel to raise this claim in said styled motion later foreclosed Watkins from preserving this issue for appellate review, therefore, for this cause Watkins urges this court to reverse remand this case for a new trial or other relief as law requires.



II. WHETHER THE TRIAL COURT ERRED BY ITS FAILURE TO AFFORD WATKINS HIS RIGHT TO COMPULSORY PROCESS TO COMPEL THE PRODUCTION OF THE EVIDENCE AT THE EVIDENTIARY HEARING?

Watkins affirmatively answers yes. On October 10, 2006, Watkins filed a "Motion for Subpoena Duces Tecum" (attached with an affidavit in support) wherein Watkins asserted that he was apprehended by the police of Montgomery Police Department for questioning concerning the murder of John Ferrell. Watkins further stated that the police took from him a taped statement, which was admitted into evidence as exhibit no.44, with the letter "A" written on its side. That taped statement contains proof that he indeed was intoxicated at the time that the crime was committed. Watkins respectfully asked that said tape marked as Exhibit 44 along with videocassette be available for inspection at the hearing that was conducted on October 12, 2006 (C.406-409). During the hearing in this present case the following occurred:

"[The Defendant]: Excuse me, your Honor, I have one request because I saw this opinion on Friday. Just one thing. The taped statement that was made at trial, is it still here? I asked that it be subpoenaed here at the time before I came down. I tried to get in touch with the clerk in order for her to get it in here on the date so I could actually let you hear the taped statement that was made at the time that I came down for an interrogation. This is the same exact tape that we used at trial that we actually listened to that the State brought forward to actually - which they said was - "

"[The Court]: Well, intoxication when you give your statement and intoxication during the offense are ~~two~~<sup>two</sup> different issues."

"[The Defendant]: That is what I was about to - that was what I was going to point out. At the time that the crime happened, there is evidence in that tape that says that we were intoxicated at the time. Not only that, this issue was not even - it was not an issue at trial because everybody had already admitted that we all were intoxicated at the time. So, it was not an issue at the time. If it had been, I want to point out the fact that Mr. Durant was ineffective for not actually pointing this out at trial."

"[Ms. Taylor]: Your Honor, I do have a copy of the case file if he would like to look at his statement that he gave to the police. It's the transcribed statement of the tape that would have actually been entered into evidence."

(TRANSCRIPT OF HEARING pp.10-11)

On October 20, 2006, the trial court entered a written order finding that Watkins failed to satisfy the requirements of Strickland, thereby, denied Watkins' Rule 32 Petition (C.423-424).

On October 31, 2006, Watkins filed a request to Alter, Amend, or Vacate the judgment entered on October 20, 2006. Wherein, Watkins asserted that the taped statement was admitted into evidence at trial (marked as exhibit No.44 with the letter "A" marked on its side) was not available for inspection at the hearing which was his only and sole evidence in which to properly argue his claim of Ineffective Assistance of Counsel as required under Strickland (C.424-426). Afterwards, Watkins, filed a motion styled as "Motion to Set Aside Judgment" requesting the trial court to reschedule another evidentiary hearing permitting him the opportunity to show the evidence

needed to prove his ineffective assistance claim (C436-437). The trial court denied said motion.

Rule 17.3, Ala.R.Crim.P., governs the issuance of subpoena duce tecum. It is clear from the wording of Rule 17.3(b) that the rule states, "The Court may direct that books, papers, documents, or other objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence<sup>5</sup>."

The view adopted by the Alabama supreme Court in Rule 17.3(d), [Ala.R.Crim.P.] was previously expressed by the United States Supreme Court in United States v. Nixon, 418 U.S. 683, 698-700, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974). In Nixon, the United States Supreme Court stated:

"A subpoena for documents may be quashed if their production would be 'unreasonable or oppressive' but not otherwise. The leading case in this Court interpreting this standard is Bowman Dairy Co. v. United States, 341 U.S. 214, 71 S.Ct. 675, 95 L.Ed. 819 (1951). This case recognized certain fundamental characteristics of the subpoena duce tecum in criminal cases: (1) it was not intended to provide a means of discovery for criminal cases, *id.* at 220; (2) its chief innovation was to expedite the trial by providing a time and place before trial for the inspection of subpoenaed materials, *ibid.* As both parties agree, cases decided in the wake of Bowman have generally followed Judge Weinfeld's formulation in United States v. Iozia, 13 F.R.D. 333, 338 (S.D.N.Y. 1952), as to the required showing. Under this test, in order to require production prior to trial, the moving party must show: (1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party

<sup>5</sup> Proceedings under this Rule shall be governed by the Rules of Criminal Procedures. See Rule 32.4, Ala.R.Crim.P.

cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general 'fishing expedition'."

"(Footnotes omitted; emphasis added.) This court has embraced the standard of review set out in United States v. Nixon,. See Sale [v. State], 570 So.2d 862 (Ala.Crim.App.1990)], and Williams v. State, 489 So.2d 4 (Ala.Cr.App.1986).

In State v. Reynolds, 819 So.2d 72 (Ala.Crim.App.1999) the Court ordered the Circuit Court to make specific findings concerning the four factors articulated by the United States Supreme Court in United States v. Nixon.

Watkins contends that the requested "taped statement" that was admitted into evidence at his trial complies with all the prerequisites of United States v. Nixon; therefore the trial court erred by its failure to afford Watkins his right to compulsory process to compel the production of the said "taped statement" at the evidentiary hearing.

Watkins points this Court to the standard for showing prejudice as stated in Strickland v. Washington, in which the Supreme Court held: "[To show prejudice, the] defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. A reasonable probability is a probability sufficient

to undermine confidence in the outcome." 466 U.S. 668, 694, 104 S.Ct. 2052.

Watkins argues that it would have been impossible to satisfy, the Strickland requirements without the requested "taped statement". He maintains that in order to have shown the trial court a reasonable probability that the outcome would have been different, he must obtain actual proof in the form of evidence that was admitted at trial and that there was some evidence that supported a jury charged on the lesser-included offense of manslaughter. Watkins says:

[Without the "taped statement", the trial courts] review is no review at all, and will require the federal courts compel the reduction of how evidence in the possession of the state and heighten federal involvement in Alabama cases. See Keeney v. Tamayo-Reyes, 504 U.S. 1, 112 is entitled to federal evidentiary hearing on merits of claim when applicant was deprived of full and fair opportunity to present evidence in state courts; 28 U.S.C. §2254; Rule 6(a) Habeas Rules [Governing §2254 cases in the United States District Courts]. Advisory Committee notes ("where specific allegations before the Court show reason to believe that the petitioner may, if the facts be fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief, it is the

duty of the Court to provide the necessary facilities and procedures for an adequate inquiry.')

As the Oregon court of Appeals stated in State v Cartwright, 173 Or.App. 59, 67, 20 P.5d 223, 229 (2001), concerning the purpose of a subpoena:

"[A] subpoena compels the production of evidence."

Quoting Ex Parte Summit Medical CTR of Montgomery, 854 So.2d 618

"The right to compulsory process has its roots in constitutional principles which recognize that a defendant must be able to compel the production of evidence in the proceedings..." Ex Parte Summit Medical CTR of Montgomery, supra, 854 So.2d at 619... "The right to compel material pursuant to subpoena is, therefore, limited to the compulsion of 'evidence'..." ID. at 619.

Watkins' final contention is that the sole purpose of the subpoena was to show unto the trial court at the hearing in this instance proceeding, that there was evidence within the contents of the "tape statement" that supported a jury charge on a lesser-included offense of manslaughter.

Based upon the foregoing in compliance with the holding in Reynolds supra, Watkins respectfully requests this Court to remand this case for this cause to the Circuit Court of Montgomery County to address the four factors in United States v. Nixon. Specifically direct this Circuit Court of Montgomery

County to address (1) whether the "audio taped statement" requested by Watkins is evidentiary and relevant. (2) Whether they are not otherwise procurable reasonably in advance of the evidentiary hearing otherwise of due diligence; (3) Whether Watkins can prepare for his Evidentiary Hearing without the production and inspection of the requested "audio taped statement" in advance of the hearing and whether the failure to inspect the "audio taped statement" may tend unreasonably to delay the Evidentiary hearing; and (4) Whether the application for the subpoena was made in good faith and not as a general "fishing expedition".

CONCLUSION

Wherefore, premises considered, Mr. Watkins prays that upon reviewing the facts and points of law, this Honorable Court shall Reverse the Judgment and Remand this case back to the trial court for an evidentiary hearing or new trial, and grant any other relief that Mr. Watkins may be entitled.

Done this the 22 day of February, 2007.

Respectfully Submitted,

David L. Watkins

David L. Watkins

A.I.S.# 219698

Draper Correctional Center

Post Office Box 1107

Elmore, AL 36025



**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing upon the Honorable Troy King, Attorney General for the State of Alabama at 11 S. Union Street, Montgomery, Alabama 36130, by placing the same in the U.S. Mail, First Class, postage prepaid and correctly address on this the 22 day of February, 2007.

David L. Watkins  
David L. Watkins, Pro se

**ADVERSE RULINGS**

Summary

Denying Watkins the right to inspect and produce said "taped statement" at the Evidentiary Hearing by way of subpoena Duce Tecum. Motion is on page C.406-409 of the record.

Denying Watkins' Rule 32

Petition for Relief.

04/20/07

Notice: This unpublished memorandum should not be cited as precedent. See Rule 54, Ala.R.App.P. Rule 54(d), states, in part, that this memorandum "shall have no precedential value and shall not be cited in arguments or briefs and shall not be used by any court within this state, except for the purpose of establishing the application of the doctrine of law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar."

## Court of Criminal Appeals

State of Alabama

Judicial Building, 300 Dexter Avenue

P. O. Box 301555

Montgomery, AL 36130-1555

PAMELA W. BASCHAB  
Presiding Judge  
H.W."BUCKY" McMILLAN  
GREG SHAW  
A. KELLI WISE  
SAMUEL HENRY WELCH  
Judges

Lane W. Mann  
Clerk  
Gerri Robinson  
Assistant Clerk  
(334) 242-4590  
Fax (334) 242-4689

### MEMORANDUM

CR-06-0408

Montgomery Circuit Court CC-00-1506.60

David Watkins v. State of Alabama

Baschab, Presiding Judge.

On May 15, 2001, the appellant was convicted of murder. On October 22, 2001, the trial court sentenced him to serve a term of life in prison. We affirmed his conviction in an unpublished memorandum and issued a certificate of judgment on May 7, 2002. See Watkins v. State, (CR-01-0232) 860 So. 2d 914 (Ala. Crim. App. 2002) (table). On August 16, 2006, the appellant filed a Rule 32 petition, challenging his conviction. After the State responded, the circuit court conducted an evidentiary hearing and denied the petition. This appeal followed.

I.



The appellant argues that he is entitled to post-conviction relief because his appellate counsel rendered ineffective assistance.<sup>1</sup> However, this claim is time-barred. See Rule 32.2(c), Ala. R. Crim. P. Because the appellant's claim was precluded, the circuit court properly denied his petition. See Rule 32.7(d), Ala. R. Crim. P.

## II.

The appellant also argues that the circuit erred when it did not grant his motion for a subpoena duces tecum. Specifically, he contends that he requested that the State provide him with the audiotape of his statement that was admitted into evidence at trial and that the audiotape was necessary to prove his ineffective-assistance-of-appellate-counsel claim. In Ex parte Land, 775 So. 2d 847, 852-53 (Ala. 2000), the Alabama Supreme Court held:

"We agree with the Court of Criminal Appeals that 'good cause' is the appropriate standard by which to judge postconviction discovery motions. In fact, other courts have adopted a similar 'good-cause' or 'good-reason' standard for the postconviction discovery process. See [State v. Marshall, [148 N.J. 89, 690 A.2d 1 (1997)]]; State v. Lewis, 656 So. 2d 1248 (Fla. 1994); People ex rel. Daley v. Fitzgerald, 123 Ill. 2d 175, 121 Ill. Dec. 937, 526 N.E.2d 131 (1988). As noted by the Illinois Supreme Court, the good-cause standard guards against potential abuse of the postconviction discovery process. See Fitzgerald, *supra*, 123 Ill. 2d at 183, 121 Ill. Dec. 937, 526 N.E.2d at 135. We also agree that New Jersey's Marshall case provides a good working framework for reviewing discovery motions and orders in capital cases. In addition, we are bound by our own rule that 'an evidentiary hearing must be held on a [petition for postconviction relief] which is meritorious on its

---

<sup>1</sup>The appellant also raised an additional claim in his petition, but he does not pursue it on appeal. Therefore, we deem that claim abandoned. See Brownlee v. State, 666 So. 2d 91 (Ala. Crim. App. 1995).

face, i.e., one which contains matters and allegations (such as ineffective assistance of counsel) which, if true, entitle the petitioner to relief.' Ex parte Boatwright, 471 So. 2d 1257, 1258 (Ala. 1985).

"We emphasize that this holding -- that postconviction discovery motions are to be judged by a good-cause standard -- does not automatically allow discovery under Rule 32, Ala. R. Crim. P., and that it does not expand the discovery procedures within Rule 32.4. Accord Lewis, supra, 656 So. 2d at 1250, wherein the Florida Supreme Court stated that the good-cause standard did not affect Florida's rules relating to postconviction procedure, which are similar to ours. By adopting this standard, we are only recognizing that a trial court, upon a petitioner's showing of good cause, may exercise its inherent authority to order discovery in a proceeding for postconviction relief. In addition, we caution that postconviction discovery does not provide a petitioner with a right to 'fish' through official files and that it 'is not a device for investigating possible claims, but a means of vindicating actual claims.' People v. Gonzalez, 51 Cal. 3d 1179, 1260, 800 P.2d 1159, 1206, 275 Cal. Rptr. 729, 776 (1990), cert. denied, 502 U.S. 835, 112 S. Ct. 117, 116 L. Ed. 2d 85 (1991). Instead, in order to obtain discovery, a petitioner must allege facts that, if proved, would entitle him to relief. Cf. Porter v. Wainwright, 805 F.2d 930, 933 (11th Cir. 1986) ('a hearing [on a habeas corpus petition] is not required unless the petitioner alleges facts which, if proved, would entitle him to federal habeas relief'), cert. denied, 482 U.S. 918, 919, 107 S. Ct. 3195, 96 L. Ed. 2d 682 (1987). Furthermore, a petitioner seeking postconviction discovery also must meet the requirements of Rule 32.6(b), Ala. R. Crim. P., which states:

"The petition must contain a clear and specific statement of the grounds upon which relief is sought, including full

disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings.'"

Also, in Jackson v. State, 910 So. 2d 797, 801-04 (Ala. Crim. App. 2005), this court stated:

"Though Alabama has had little opportunity to define what constitutes 'good cause,' in Ex parte Mack, 894 So. 2d 764, 768 (Ala. Crim. App. 2003), we quoted with approval an Illinois case the Alabama Supreme Court relied on in Land -- People v. Johnson, 205 Ill. 2d 381, 275 Ill. Dec. 820, 793 N.E.2d 591 (2002):

"'"A trial court has inherent discretionary authority to order discovery in post-conviction proceedings. See People ex rel. Daley v. Fitzgerald, 123 Ill. 2d 175, 183, 121 Ill. Dec. 937, 526 N.E.2d 131 (1988); People v. Rose, 48 Ill. 2d 300, 302, 268 N.E.2d 700 (1971). A court must exercise this authority with caution, however, because a defendant may attempt to divert attention away from constitutional issues which escaped earlier review by requesting discovery. ... Accordingly, the trial court should allow discovery only if the defendant has shown 'good cause,' considering the issues presented in the petition, the scope of the requested discovery, the length of time between the conviction and the post-conviction proceeding, the burden of discovery on the State and on

any witnesses, and the availability of the evidence through other sources. Daley, 123 Ill. 2d at 183-84, 121 Ill. Dec. 937, 526 N.E.2d 131; see People v. Fair, 193 Ill. 2d 256, 264-65, 250 Ill. Dec. 284, 738 N.E.2d 500 (2000). We will reverse a trial court's denial of a post-conviction discovery request only for an abuse of discretion. Fair, 193 Ill. 2d at 265, 250 Ill. Dec. 284, 738 N.E.2d 500. A trial court does not abuse its discretion in denying a discovery request which ranges beyond the limited scope of a post-conviction proceeding and amounts to a 'fishing expedition.'"

"894 So. 2d at 768-69 (quoting Johnson, 205 Ill. 2d at 408, 275 Ill. Dec. at 836-37, 793 N.E.2d at 607-08). See also State v. Lewis, 656 So. 2d 1248 (Fla. 1994).

"The New Jersey Supreme Court in State v. Marshall, 148 N.J. 89, 690 A.2d 1 (1997), a case also cited with approval by the Alabama Supreme Court in Land, stated:

"We anticipate that only in the unusual case will a PCR [postconviction relief] court invoke its inherent right to compel discovery. In most cases, a post-conviction petitioner will be fully informed of the documentary source of the errors that he brings to the PCR court's attention. Moreover, we note that PCR "is not a device for investigating possible claims, but a means for vindicating actual claims." People v. Gonzalez, 51 Cal. 3d 1179, 275 Cal. Rptr. 729, 776, 800 P.2d 1159, 1206 (1990), cert. denied, 502 U.S.

835, 112 S. Ct. 117, 116 L. Ed. 2d 85 (1991). The filing of a petition for PCR is not a license to obtain unlimited information from the State, but a means through which a defendant may demonstrate to a reviewing court that he was convicted or sentenced in violation of his rights.  
...

"Moreover, consistent with our prior discovery jurisprudence, any PCR discovery order should be appropriately narrow and limited. "[T]here is no postconviction right to 'fish' through official files for belated grounds of attack on the judgment, or to confirm mere speculation or hope that a basis for collateral relief may exist." Gonzalez, supra, 275 Cal. Rptr. at 775, 800 P.2d at 1205; see Deputy v. Taylor, 19 F.3d 1485, 1493 (3d Cir.), cert. denied, 512 U.S. 1230, 114 S. Ct. 2730, 129 L. Ed. 2d 853 (1994); State v. Thomas, 236 Neb. 553, 462 N.W.2d 862, 867-68 (1990). However where a defendant presents the PCR court with good cause to order the State to supply the defendant with discovery that is relevant to the defendant's case and not privileged, the court has discretionary authority to grant relief. See Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C.A. §2254 Rule 6(a); [State v.] Lewis, ... 656 So. 2d [1248,] 1250 [(Fla. 1994)]; [People ex rel. Daley v.] Fitzgerald, [123 Ill. 2d 175, 183,] 121 Ill. Dec. [937,] 941, 526 N.E.2d [131,] 135 [(1998)] (noting that "good cause" standard guards against potential abuse of PCR discovery process).'

"Marshall, 148 N.J. at 270-71, 690 A.2d at 91-92.

"The federal courts have adopted a similar standard for discovery in relation to federal habeas corpus actions. In Murphy v. Bradshaw, [No. C-1-03-

053, September 13, 2003] (S.D. Ohio 2003) (not published), an Ohio court stated:

"A habeas petitioner is not entitled to discovery as a matter of course, but only upon a fact-specific showing of good cause and in the Court's exercise of discretion. Rule 6(a), Rules Governing §2254 Cases; Bracy v. Gramley, 520 U.S. 899, 117 S. Ct. 1793, 138 L. Ed. 2d 97 (1997); Harris v. Nelson, 394 U.S. 286, 89 S. Ct. 1082, 22 L. Ed. 2d 281 (1969); Byrd v. Collins, 209 F.3d 486, 515-16 (6th Cir. 2000). Good cause exists "where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is ... entitled to relief ...." Bracy, 520 U.S. at 908-909, quoting Harris, 394 U.S., at 300, 89 S. Ct., at 1091. Conversely, where a petitioner would not be entitled to relief on a particular claim, regardless of what facts he developed, he cannot show good cause for discovery on that claim."

"(Emphasis added.) 'This authority [to order discovery in postconviction proceedings] must be exercised with caution, because of the potential for abuse of the discovery process and because of the limited scope of postconviction proceedings.' People v. Williams, 209 Ill. 2d 227, 236, 282 Ill. Dec. 824, 830, 807 N.E.2d 448, 454 (2004). '[T]he range of issues in a post-conviction proceeding is relatively narrow, and discovery requirements are correspondingly limited.' People ex rel. Daley v. Fitzgerald, 123 Ill. 2d 175, 182, 121 Ill. Dec. 937, 940, 526 N.E.2d 131, 134 (1988).

"....

"... In Hooks v. State, 822 So. 2d 476 (Ala. Crim. App. 2000), we held:



"'We agree with the State that a claim that is procedurally barred in a postconviction petition clearly is not one that entitles a petitioner to relief. If a postconviction claim does not entitle the petitioner to relief, then the petitioner has failed to establish good cause for the discovery of materials related to that claim. See Land.'

"822 So. 2d at 481. '[I]f a particular claim is procedurally defaulted, no matter what facts a petitioner develops, he will not be able to show that he is entitled to relief. Therefore, there can be no good cause to allow discovery of facts underlying a procedurally defaulted claim.' Murphy v. Bradshaw, (No. C-1-03-053, September 13, 2003) (S.D. Ohio 2003) (not published)."

(Footnote omitted) (emphasis added).

As we discussed in Part I of this memorandum, the appellant's ineffective-assistance-of-appellate-counsel claim was time-barred, and he was not entitled to relief as to that claim. Therefore, the appellant did not show good cause as to why the audiotape necessary. Accordingly, his argument is without merit. See Ex parte Land, supra; Jackson, supra; Hooks, supra.

For the above-stated reasons, we affirm the circuit court's judgment.

**AFFIRMED.**

McMillan, Shaw, and Wise, JJ., concur; Welch, J., concurs in the result.

**COURT OF CRIMINAL APPEALS  
STATE OF ALABAMA**

Lane W. Mann  
Clerk  
Gerri Robinson  
Assistant Clerk



P. O. Box 301555  
Montgomery, AL 36130-1555  
(334) 242-4590  
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May 11, 2007

**CR-06-0408**

David Watkins v. State of Alabama (Appeal from Montgomery Circuit Court:  
CC00-1506.60)

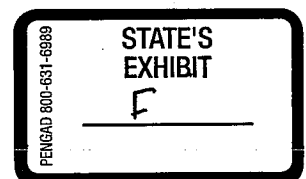
**NOTICE**

You are hereby notified that on May 11, 2007 the following action was taken in the above referenced cause by the Court of Criminal Appeals:

Application for Rehearing Overruled.

**Lane W. Mann, Clerk  
Court of Criminal Appeals**

cc: Hon. Melissa Rittenour, Circuit Clerk  
David L. Watkins, Pro Se  
Daniel W. Madison, Asst. Atty. Gen.



No \_\_\_\_\_

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**In The Supreme Court of Alabama**

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**Ex Parte David L. Watkins**

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**In re:**

**David L. Watkins,**

**Petitioner-Appellant,**

**v.**

**State of Alabama**

**Respondent-Appellee,**

---

**On Appeal from Montgomery County Circuit Court**

**(CC-00-1506.60)**

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**On Petition for Writ of Certiorari to the Court of**

**Criminal Appeals (CR-06-0408)**

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**Petition for Writ of Certiorari**

**[Pro'Se/Appellant]**

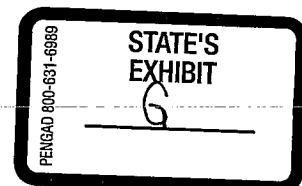
**David L. Watkins**

**A.I.S.# 219698**

**Draper Correctional Facility**

**P.O. Box 1107**

**Elmore, Alabama 36025**



### PETITION FOR WRIT OF CERTIORARI

The Appellant, David L. Watkins, petitions this court to issue a writ of certiorari to the Court of Criminal Appeals. Your Petitioner respectfully ask that this Court reverse the lower court's opinion published April 20, 2007, in which it affirmed the trial court's decision denying Rule 32 Post-Conviction Relief in case number CC-00-1506.60, Your Petitioner request that this Court find that the Court of Criminal Appeals decision was in conflict with prior decisions of the United States Supreme Court, the Alabama Supreme Court and the Alabama Court of Criminal Appeals, Watkins further submits that the lower court's published opinion of April 20, 2007, does not follow established legal precedent, nor does it correctly construe a controlling provision of the Alabama Constitution and the United States Constitution regarding whether the Court of Criminal Appeals decision violated Watkins' due process rights and whether the State satisfied its burden of pleading under Rule 32.3 of the Alabama Rules of Criminal Procedure.

In support of this petition, Watkins submits the following facts in support of third petition which were filed in his Application for Rehearing pursuant to Rule 40 (e):

On or about October 19, 1999 your Petitioner, David Watkins was playing cards and listening to music with co-defendants Robert Watkins, Lataya Davis, and the victim, John Ferrell. They were in the home of Robert Watkins on Keystone Street in Montgomery, Alabama. The "Audio taped confession," indicates that all parties involved were drinking around the time the alleged crime transpired. In which, John Ferrell was beaten and killed from a gunshot wound to the head. (C.130, 138,139) 1 the body of the victim was later found in a ditch at the end of the street.

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#### FOOTNOTE:

The taped confession was admitted into evidence as exhibit No. 44, with the letter "A" marked on it. (C.130, 135,139)

Each of the defendants blames the other. The Chief evidence, which convicted Watkins, was his taped statement. (C.74)

On May 15, 2001, the appellant was convicted of murder. On October 22, 2001, the trial court sentenced him to serve a term of life in prison. This court affirmed his conviction in an unpublished memorandum and issued a certificate of judgment on May 7, 2007. See Watkins V. State, (CR-01-0232) 860 So. 2d 914 (Ala. Crim. App. 2002) (table). On August 16, 2006, the appellant filed a Rule 32 petition, challenging his conviction.

The State filed its response to Watkins' petition on September 25, 2006 and asserted the petition was due to be dismissed because the petition was barred and meritless. (C. 390-392)

On September 25, 2006, the Circuit Court issued an order setting the matter for an evidentiary hearing.

On October 5, 2006, Mr. Watkins mailed a "Motion for Subpoena Duce Tecum" (attached with an affidavit in support) that was filed by the Circuit Court Clerk of Montgomery County on October 10, 2006. (C. 1,406-409) Wherein he requested the trial court to compel the production of the "audio taped statement" to be available for inspection at the hearing because said "taped statement" contains evidence that he and his co-defendants were intoxicated during the commission of the crime. (C. 406-408)

On October 12, 2006, Watkins' was given an evidentiary hearing. (R.1) Winston Durant, Watkins' trial counsel, testified that he had familiarized himself with the facts of the case before trial and after the state had presented its case in chief. Mr. Durant did not submit a requested jury instruction on the lesser-included offense of Manslaughter based upon intoxication, because in his professional judgment, the facts of the case did not support such a request. (R. 7-8) Mr. Durant's recollection of testimony was that there was some evidence of drinking; however, the evidence was insufficient to rise "to the proportion where you would think it would impair a person's intent." (R. 9)

During the hearing, Mr. Watkins made a request by asking the trial court was the "taped statement" that was entered into evidence at his trial available, so that he could point out, at the time the crime occurred there was evidence in that said "taped statement" that indicates that he was in fact intoxicated. (R. 10-11) The State produced a transcribed

statement of the tape during the hearing, and Watkins reviewed the statement and argued that the statement clearly indicates that there was drinking going on at the time of the crime. However, the transcribed statement of the tape that the state produced at the hearing was insufficient because said copy of the statement was not admitted into evidence at trial in this case at bar. (C. 77-79)

Based upon the copy of the statement that the state produced at the hearing was insufficient the Circuit Court stated, "You are going to have to have more than that. "That is a long way from —" (R.13) And furtherly questioned Watkins, whether there was any testimony from any of the witness that he could present who could testify to his alleged impairment, and Watkins replied, "There is nothing else here." (R.15-16)

The Court heard some further argument from Watkins, and at the conclusion of the hearing stated:

The Court: Maybe. Maybe you were. But that is a jury question

And the jury believed against you. That is all I can — I am not going to come back here and second — guess the jury. But Mr. Watkins, for God's sake, there is more than proof beyond a reasonable doubt in this case of your culpability. I am going to deny your Rule 32 Petition. I am going in Court. The jury found against you I do not see how else they could have found under the evidence in this case.

On October 20, 2006, The Circuit Court issued its order dismissing Watkins' Rule 32 Petition and stated the following as its findings of fact and conclusions of law:

A hearing was held on October 12, 2006 with Petitioners present. Petitioner raises three claims via his Rule 32 Petition initially; he alleges ineffective assistance of counsel due to the failure of counsel to ask for a jury charge on manslaughter because of intoxication. However, Petitioner acknowledge that there was no actual evidence at trial concerning the lesser — included charge. In addition, Petitioner failed to satisfy the requirements of Strickland.

On October 23, 2006, Mr. Watkins, submitted a Motion to Alter, Amend or Vacate Judgment, due to the tape statement not made available for inspection and was the sole evidence in which to properly argue his claim of ineffective assistance of counsel (C-425-426) The Trail Court denied said motion. On November 7, 2006, Mr. Watkins, submitted a "Motion to Set Aside Judgment" where he requested the trial court to re-schedule another evidentiary hearing permitting him the opportunity to show the evidence needed to prove his ineffective assistance claim or in the alternative take judicial notice of the "taped statement (C-436-38) The Trail Court denied said motion on May 3, 2007, Watkins, filed an application For Rehearing and Motion pursuant to Rule 40(e) of the Alabama Rules of Appellate Procedure For The Finding of Additional Facts on May 11, 2007 the Court of Criminal Appeals overruled Watkins' Application.

### ARGUMENT

Your Petitioner, argues that the Petition for writ should issue pursuant to the Rule 39 (a) ( I ) ( A ) and ( D ).

The following language from the published opinion of December 15, 2006 is submitted pursuant to Rule 39 (1)(a) (D) (D):

"The appellant's ineffective assistance of counsel claim was time-barred, and he was not entitled to relief as to that claim. Therefore, the appellant did not show good as to why the audio was necessary. Accordingly, his argument is without merit."

The above ruling is in conflict with the United States Constitution, The Alabama Constitution, The Alabama Supreme Court and Rule 32.3, Alabama Rules of Criminal Procedure on this issue. WHY?

Because in this present case the District Attorney asserted in its Motion to dismiss that the instant petition was "barred" and meritless (C.392) The District Attorney merely, denied the allegations of the petition and did not specify any Grounds of Preclusion. (C.390-392).

Therefore, the questions presented in this Writ is whether your Petitioner's due process right was violated and whether the State satisfied its burden of pleading under Rule 32.3.

The Alabama Supreme Court consistently held that under former Rule 20.3 (now Rule 32.3) the State is required to plead the ground or grounds of preclusion that it believe apply to the petitioner's case, thereby giving the petitioner the notice he needs to attempt to formulate arguments and present evidence to "disprove [the] existence of the evidence." A general allegation that merely refers the petitioner and the trial court to the Rule does not provide the type of notice necessary to satisfy the requirements of due process and does not meet the state burden of pleading assigned to the State by former Rule 20.3, A.R.Cr.P. Ex Parte Rice, 565 So. 2d 606, 608 (Ala. Crim. App. 1990) Faulkner v State, 586 So.2d 39, 42 (Ala. Crim. App. 1991)

After diligent research, your petitioner has found no legal precedent excusing this fundamental due process requirement.

Watkins, contends that the denial of his petitioner on the basis of the State's broad 'barred' allegation constitutes a denial of his right to due process. He maintains that the State's failure to allege a specific ground of procedural bar deprived him of the notice to which he was entitled, thus making it impossible for him to disprove the existence of a ground of procedural bar. In addition, he argues that the state's blanket allegation did not satisfy the burden of pleading assigned to the State by Rule 32.3, produced below,



**Rule 32.3 Burden of Proof**

"The petitioner shall have the burden of pleading and proving by a preponderance of the evidence the facts necessary to entitle him to relief. The State shall have the burden of pleading any ground of preclusion, but once a ground of preclusion has been plead, the petitioner shall have the burden of disproving its existence by a preponderance of the evidence."

**(Emphasis added)**

The Alabama Supreme Court has never held that the Rule 32.2 ( c )' one-year deadline is jurisdictional, see Ex Parte Hutcherson , 847 So. 2d 386, 388 (Ala. 2002).

Therefore, since the state failed to argue that this issue is time barred by Rule 32.2 (e) in its motion to dismiss the State has ineffective waived that ground of preclusion. See Ex Parte Williams, 571 So. 2d 987, 989 (Ala. 1990) (the failure of a party from raising that matter on appeal as error) See also Faulkner v. State, 586 So. 2d 39, 42 (Ala. Crim. App. 1991).

**WHEREFORE, DAVID L. WATKINS**, respectfully ask this Court to grant certiorari review and issue writ to the Alabama Court of Criminal Appeals reversing its decision and adjudicate Watkins claims which was presented on appeal, grant Watkins' request for Rule 32 Post-Conviction Relief, remand this case to the Montgomery Circuit Court for a New Trial, and/ or other relief deemed appropriate, these premises considered.

Respectfully submitted

*David L. Watkins*  
 David L. Watkins #219698  
 Draper Correctional Center  
 P.O. Box 1107  
 Elmore, Alabama 36025

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing upon Daniel W. Madison  
Attorney General for the State of Alabama at 11 S. Union Street Montgomery,  
Alabama 36130, by placing the same in the U.S. Mail, First Class postage pre-paid  
and correctly addressed on this 22 day of May, 2007.

David L. Watkins  
**David L. Watkins, Pro-se**  
**A.L.S. # 219698**  
**Draper Correctional Center**  
**P.O.Box 1107**  
**Elmore, Alabama 36025**

**VERIFICATION OF SUBMITTED FACTS**

Undersigned Petitioner hereby swears, under penalty of perjury, that the facts submitted in this Petition for Writ of Certiorari are a verbatim copy of the statement presented to the Court of Criminal Appeals in the application for rehearing of this matter.

Dated: May 22, 2007.

David L. Watkins

David Watkins #219698

Draper Correctional Center

P.O. Box 1107

Elmore, AL 36025

# IN THE SUPREME COURT OF ALABAMA



August 31, 2007

1061236

Ex parte David Watkins. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: David Watkins v. State of Alabama) (Montgomery Circuit Court: CC00-1506.60; Criminal Appeals : CR-06-0408).

## CERTIFICATE OF JUDGMENT

### Writ Denied

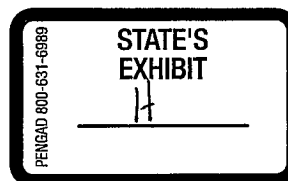
The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

BOLIN, J. - See, Stuart, Smith, and Parker, JJ., concur. Lyons, Woodall, and Murdock, JJ., dissent. Cobb, C.J., recuses herself.

**I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.**

**Witness my hand this 31st day of August, 2007**

*Robert G. Esdale, Sr.*  
**Clerk, Supreme Court of Alabama**



**Alabama Court of Criminal Appeals Docket Sheet****CR-04-0731****PET : Writ of Mandamus****CR-04-0731**

Ex parte David Watkins (In re: State of Alabama vs. David Watkins) (Montgomery  
Circuit Court: CC00-1506)

**EXPEDITED****Petition Filed : 01/25/2005**

Docketed 01/26/2005 JZ

Last Updated / /

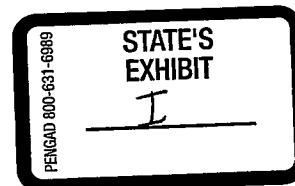
**Post Judgment Motions****Attorneys & Officials**

Circuit Judge	Truman Hobbs	Montgomery, AL (334) 832-7147
Circuit Clerk	Melissa Rittenour	Montgomery, AL (334) 832-1289
Pro Se Pet.	David L. Watkins	Elmore, AL ( ) -
A.G. for Resp.	Troy King	Montgomery, (334) 242-7300
D. A. for Resp.	Eleanor Idelle Brooks	Montgomery, AL (334) 832-2550

**Case Actions / Postings**

01/25/2005 Petition for writ of mandamus filed. (rec'd 1/26/05)

01/26/2005 Petitioner allowed 14 days to file certificate of service showing service on respondent. If certificate of service is not "received" within 14 days, petitioner placed on notice that this petition shall be dismissed for non-compliance with Rule 21(a), Ala. R. App. P.

**END OF DOCKETING INFORMATION**

**COURT OF CRIMINAL APPEALS**  
**STATE OF ALABAMA**

76297

H. W. "BUCKY" McMILLAN  
Presiding Judge  
SUE BELL COBB  
PAMELA W. BASCHAB  
GREG SHAW  
A. KELLI WISE  
Judges



Lane W. Mann  
Clerk  
Sonja McKnight  
Assistant Clerk  
(334) 242-4590  
Fax (334) 242-4689

**CR-04-0731**

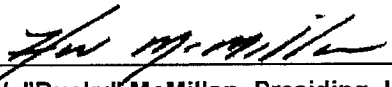
Ex parte David Watkins (In re: State of Alabama vs. David Watkins) (Montgomery Circuit Court: CC00-1506)

**ORDER**

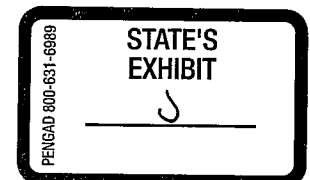
The Court of Criminal Appeals ORDERS that the petitioner in this cause be and the same is hereby given 14 days from the date of this order to file a certificate of service with this Court evidencing his/her compliance with the service requirements of Rule 21(a) of the Alabama Rules of Appellate Procedure. Rule 21(a) requires that the petitioner serve the respondent judge or judges and all parties to the action in the trial court with a copy of the petition. The petitioner's certificate of service shall indicate the name and address of each person served with a copy of the petition, as well as the date and manner of such service.

Lastly, the petitioner is hereby placed on notice that in the event this Court has not "received" a certificate of service that conforms to the directives in this order within the 14-day period herein allowed, this petition shall be dismissed for non-compliance with Rule 21(a), Alabama Rules of Appellate Procedure.

Done this the 26th day of January, 2005.

  
H. W. "Bucky" McMillan, Presiding Judge  
Court of Criminal Appeals

cc: Hon. Truman Hobbs, Circuit Judge  
Hon. Melissa Rittenour, Circuit Clerk  
David L. Watkins, Pro Se  
Hon. Troy King, Attorney General ✓  
Hon. Eleanor Idelle Brooks, District Attorney



**COURT OF CRIMINAL APPEALS**

**STATE OF ALABAMA**

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**CR-04-0731**

Ex parte David Watkins (In re: State of Alabama vs. David Watkins) (Montgomery Circuit Court: CC00-1506)

**ORDER**

Upon consideration of the above referenced Petition for Writ of Mandamus, the Court of Criminal Appeals orders that said petition be and the same is hereby DISMISSED because it does not contain proof of service on the respondent.

Done this the 2nd day of March, 2005.

  
H. W. "Bucky" McMillan, Presiding Judge  
Court of Criminal Appeals

cc: Hon. Truman Hobbs, Circuit Judge  
Hon. Melissa Rittenour, Circuit Clerk  
David L. Watkins, Pro Se  
Hon. Troy King, Attorney General  
Hon. Eleanor Idelle Brooks, District Attorney

